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THE UNIVERSITY OF OKLAHOMA

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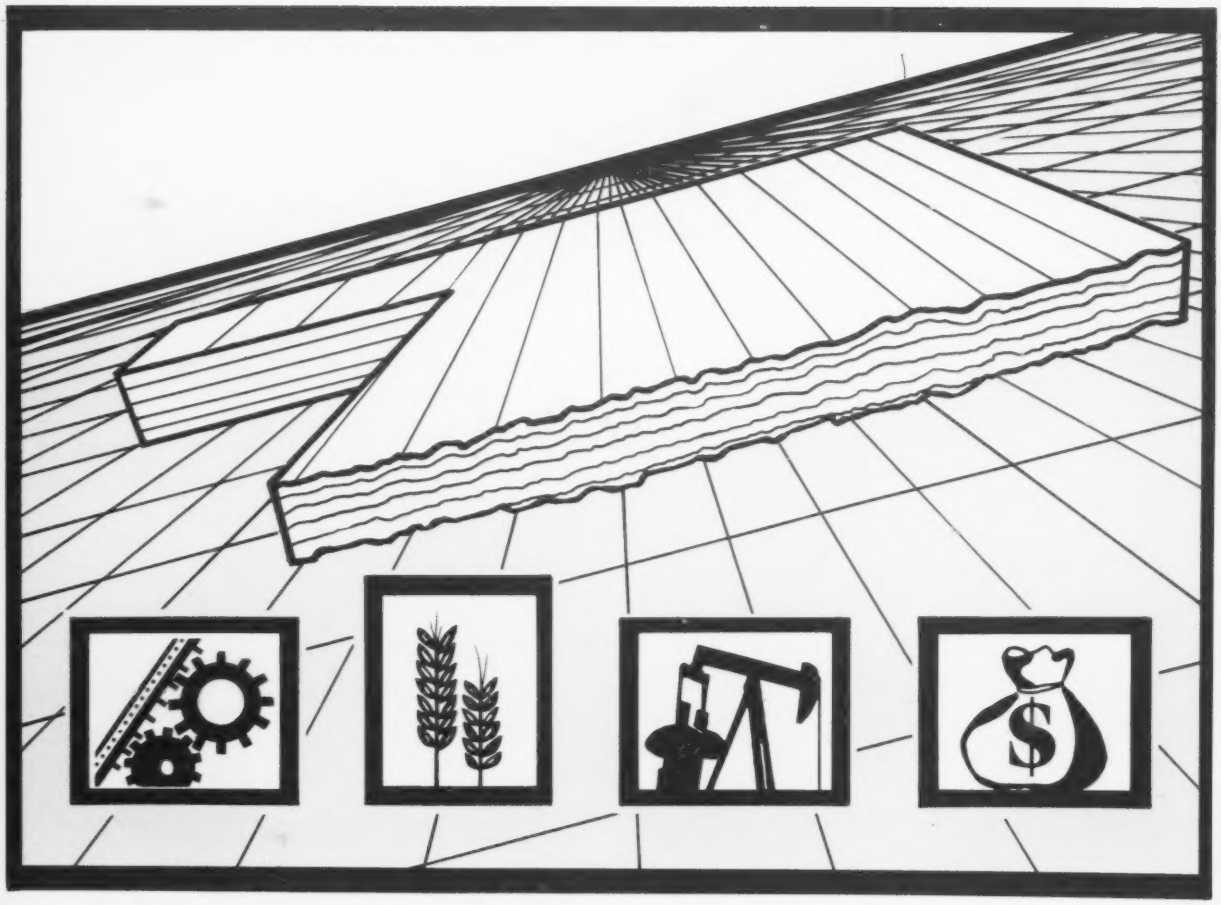

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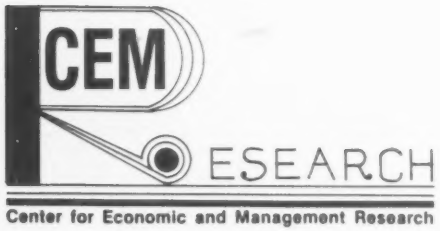

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SUMMARY OF INDICATORS

Category	6 Mos. '90	6 Mos. '89	June '90	Percentage Change 6 Mos. '90/'89	Percentage Change June/May '90
Personal Income (Monthly Average)					
Unadjusted ($000,000)	4,593	4,333	4,640	6.0	0.4
Adjusted for CPI ($000,000)	3,569	3,532	3,572	1.0	-0.2
Crude Oil Production (000 bbl)[a]	42,345	46,159	7,845	-8.3	-5.4
Natural Gas Production (000 mcf)[a]	867,580	889,537	146,794	-2.5	-16.1
Industrial Power Sales (000,000 Kwh)[b]	4,418	4,296	791	2.8	6.9
Total Bank Deposits (Monthly Average) ($000,000)					
Demand	7,548	7,457	7,487	1.2	0.4
Savings	23,228	23,568	23,409	-1.4	-0.1
General Business Index	98.2	95.5	98.9	2.8	0.9

Note: Includes revisions.

[a]Five months and May data. Natural gas includes casinghead gas.

[b]Sales of larger privately owned utility companies.

SELECTED ECONOMIC INDICATORS

Category	6 Mos. '90	6 Mos. '89	June '90	Percentage Change 6 Mos. '90/'89	Percentage Change June/May '90
PERMIT-AUTHORIZED CONSTRUCTION					
Residential—Single Family					
Dollar Value ($000)	202,172	178,828	36,754	15.8	-10.6
Number of Units	2,435	2,139	428	13.8	-8.0
Residential—Multi Family					
Dollar Value ($000)	10,022	21,498	8,971	-53.4	E
Number of Units	349	492	300	-29.1	E
Nonresidential					
Commercial ($000)	69,824	50,269	9,424	38.9	-24.2
Industrial ($000)	61,170	14,207	336	330.6	-94.4
Institutional ($000)	8,686	21,758	1,567	-60.1	330.4
Nonbuilding					
Streets and Highways ($000)	130,925	155,164	32,949	-15.6	40.0
All Other Nonbuilding ($000)	3,531	3,273	903	7.9	51.1
Total Construction ($000)	491,330	444,997	90,903	10.4	8.1
EMPLOYMENT TRENDS					
Total Labor Force (000)[a]	1,531.0	1,509.7	1,577.0	1.4	1.8
Total Employment (000)	1,446.2	1,416.4	1,500.8	2.1	2.5
Unemployment Rate (%)	5.7	6.2	4.8	—	—
Wage and Salary Employment (000)	1,163.5	1,149.7	1,172.3	1.2	-0.1
Manufacturing (000)	163,500	162,200	165,100	0.8	0.6
Mining (000)	44,400	42,700	45,500	4.0	2.0
Government (000)	258,200	258,600	253,800	-0.2	-3.8
Contract Construction (000)	35,300	34,100	36,900	3.5	3.9
Services (000)	261,700	254,900	265,400	2.7	0.8
Retail Trade (000)	216,700	212,700	220,300	1.9	0.7
Average Weekly Hours (Per Worker)					
Manufacturing	40.9	41.2	40.3	-0.7	0.2
Average Weekly Earnings ($ Per Worker)					
Manufacturing	436.50	430.42	437.66	1.4	4.1
Contract Construction	444.77	416.66	454.54	6.7	2.9
Retail Trade	191.76	194.21	196.80	-1.3	2.7

Note: Includes revisions in some previous months.

[a]Civilian Labor Force. Labor Force employment and unemployment rate refer to place of residence, non-agricultural wage and salary employment refers to place of work.

E = Exceeds 600 percent.

RETAIL TRADE IN METRO AREAS AND STATE
($000)

Retail Trade	6 Mos. '90 Adjusted	6 Mos. '89 Adjusted	June '90 Adjusted	June '90 Unadjusted	Percentage Change 6 Mos. '90/'89 Adjusted	Percentage Change June/May '90 Adjusted	Percentage Change June/May '90 Unadjusted
OKLAHOMA CITY MSA							
Food Group	1,012,919	956,073	188,123	195,755	5.9	13.5	14.5
Apparel Group	180,016	163,721	31,975	28,967	10.0	13.7	14.0
General Merchandise Group	567,382	598,529	94,158	95,061	-5.2	-1.6	2.3
Furniture Group	168,204	144,655	28,210	28,013	16.3	8.2	14.2
Lumber Group	104,202	93,893	16,903	20,365	11.0	2.1	5.3
Gasoline	231,832	224,138	38,599	41,912	3.4	2.6	7.3
All Other	290,007	192,039	46,944	51,830	51.0	-8.0	-3.5
Total	2,554,562	2,373,048	444,912	461,903	7.6	5.7	8.4
TULSA MSA							
Food Group	767,751	711,226	145,279	154,287	7.9	23.4	25.3
Apparel Group	124,342	113,146	21,776	20,311	9.9	6.6	12.6
General Merchandise Group	487,363	432,792	81,238	80,814	12.6	0.0	2.5
Furniture Group	122,543	105,902	19,745	19,659	15.7	3.3	11.3
Lumber Group	96,419	89,088	16,266	19,193	8.2	6.5	16.1
Gasoline	142,055	137,339	23,651	25,681	3.4	2.6	7.3
All Other	134,334	129,238	22,611	23,888	3.9	2.1	-8.1
Total	1,874,807	1,718,731	330,566	343,833	9.1	10.6	13.0
ENID MSA							
Food Group	55,170	52,955	9,175	9,647	4.2	-7.4	0.3
Apparel Group	9,979	9,753	1,615	1,489	2.3	2.2	-4.1
General Merchandise Group	50,436	42,815	8,466	7,996	17.8	0.4	-3.8
Furniture Group	6,972	6,827	1,129	1,134	2.1	-2.3	-2.7
Lumber Group	6,562	5,726	981	1,074	14.6	-7.8	-11.0
Gasoline	13,295	12,853	2,213	2,403	3.4	2.5	7.2
All Other	10,227	11,410	2,036	2,597	-10.4	16.8	18.7
Total	152,641	142,339	25,615	26,340	7.2	-1.6	0.2
LAWTON MSA							
Food Group	81,287	76,155	15,978	16,288	6.7	20.2	18.3
Apparel Group	14,128	12,239	2,299	2,230	15.4	-4.2	-0.1
General Merchandise Group	70,610	71,607	12,063	11,767	-1.4	0.9	-1.5
Furniture Group	13,770	13,241	2,525	2,509	4.0	14.6	15.7
Lumber Group	10,991	11,285	1,690	1,916	-2.6	-8.4	-12.8
Gasoline	20,324	19,650	3,383	3,674	3.4	2.6	7.3
All Other	12,971	13,513	2,139	2,393	-4.0	12.3	6.9
Total	224,081	217,690	40,077	40,777	2.9	8.6	7.4
MUSKOGEE AREA							
Food Group	61,053	58,110	11,377	11,889	5.1	15.8	17.9
Apparel Group	14,040	12,822	2,282	2,129	9.5	1.5	-3.4
General Merchandise Group	39,317	34,638	6,720	6,426	13.5	7.8	7.7
Furniture Group	7,163	6,264	1,318	1,404	14.4	14.6	27.9
Lumber Group	7,054	6,288	1,263	1,511	12.2	9.9	24.0
Gasoline	14,820	14,328	2,467	2,679	3.4	2.6	7.2
All Other	11,595	11,089	2,526	2,430	4.6	38.8	21.3
Total	155,042	143,539	27,953	28,468	8.0	12.6	13.6
STATE[a]							
Durable Goods	936,954	890,670	159,066	171,921	5.2	6.0	8.9
Accessory Dealers	192,259	190,732	32,342	36,876	0.8	3.4	6.6
Furniture	253,991	211,632	42,680	41,945	20.0	7.8	13.3
Household Appliances	135,467	133,500	24,388	24,557	1.5	7.7	12.3
Total Furniture and Appliances	389,458	345,132	67,068	66,502	12.8	7.8	12.9
Lumber and Building Materials	292,467	273,875	49,581	57,434	6.8	7.6	9.3
Hardware Stores	34,472	34,333	5,800	6,572	0.4	5.2	4.4
Total Lumber, Building Materials & Hardware	326,939	308,208	55,381	64,006	6.1	7.3	8.8
Nondurable Goods	5,940,494	5,631,181	1,061,249	1,092,505	5.5	8.9	8.0
Apparel	436,177	415,539	77,081	71,468	5.0	6.1	5.1
Drug Stores	230,685	219,375	38,223	36,648	5.2	2.3	-1.7
Eating and Drinking Places	906,828	845,102	158,051	166,826	7.3	8.8	6.1
Food Group	1,935,544	1,834,792	365,030	377,449	5.5	18.4	17.7
Gasoline	679,469	656,927	113,129	122,837	3.4	2.6	7.3
General Merchandise Group	1,402,438	1,348,331	246,116	244,669	4.0	2.9	2.1
Total Retail Trade	6,877,448	6,521,851	1,220,315	1,264,426	5.5	8.5	8.1

[a]Total includes data for categories not shown in the table.

RETAIL TRADE IN SELECTED CITIES
($000)

Retail Trade	6 Mos. '90 Adjusted	6 Mos. '89 Adjusted	June '90 Adjusted	June '90 Unadjusted	Percentage Change 6 Mos. '90/'89 Adjusted	Percentage Change June/May '90 Adjusted	Percentage Change June/May '90 Unadjusted
Ada	63,690	59,161	11,519	11,835	7.7	9.5	10.4
Altus	49,571	46,555	9,796	9,104	6.5	10.3	9.1
Alva	17,456	15,874	3,201	3,437	10.0	17.3	23.5
Anadarko	20,966	19,696	3,755	4,100	6.4	12.1	17.0
Ardmore	90,722	82,371	15,694	16,109	10.1	3.1	2.1
Bartlesville	117,070	106,525	21,899	22,176	9.9	18.3	19.1
Blackwell	14,587	13,714	2,663	2,784	6.4	10.1	15.8
Broken Arrow	118,475	110,720	20,743	22,026	7.0	11.9	10.7
Chickasha	49,189	44,732	8,651	9,094	10.0	6.9	7.2
Clinton	27,510	25,336	4,966	5,266	8.6	7.5	13.3
Cushing	23,451	21,908	3,770	4,139	7.0	-3.5	-3.8
Del City	57,373	57,035	10,427	11,852	0.6	20.3	30.9
Duncan	72,362	67,409	12,383	13,033	7.3	7.0	3.0
Durant	49,636	42,518	8,734	9,238	16.7	7.8	14.4
Edmond	138,352	118,631	25,946	26,256	16.6	10.0	9.0
Elk City	37,961	33,749	6,662	6,853	12.5	9.6	14.4
El Reno	35,889	33,202	6,369	6,678	8.1	4.4	2.7
Guthrie	25,593	25,326	4,714	5,136	1.1	14.7	16.3
Guymon	25,744	22,406	5,190	5,354	14.9	15.8	10.0
Henryetta	23,609	21,461	4,407	4,786	10.0	14.1	13.3
Hobart	13,048	12,605	2,233	2,421	3.5	5.4	9.6
Holdenville	9,905	9,656	1,703	1,750	2.6	5.3	3.4
Hugo	18,155	16,442	3,036	3,068	10.4	2.4	-1.4
Idabel	24,807	22,767	4,645	4,740	9.0	16.0	14.9
Lawton	207,043	201,244	37,021	37,782	2.9	8.4	7.4
McAlester	59,209	53,321	11,234	11,484	11.0	19.6	16.3
Miami	46,349	43,700	7,744	8,057	6.1	1.9	3.9
Midwest City	205,488	196,378	35,395	35,535	4.6	5.8	2.2
Moore	80,573	76,229	14,153	14,300	5.7	4.8	3.4
Muskogee	130,736	120,438	23,204	23,926	8.6	10.2	13.7
Norman	188,912	176,900	36,513	36,951	6.8	19.5	22.9
Oklahoma City	1,274,684	1,916,263	217,159	226,609	6.6	4.8	8.3
Okmulgee	24,707	22,620	4,908	5,163	9.2	41.6	41.3
Pauls Valley	27,664	24,775	5,247	5,587	11.7	14.6	19.8
Pawhuska	10,768	10,208	1,883	2,264	5.5	8.2	23.4
Ponca City	93,463	85,186	16,346	17,127	9.7	7.0	12.3
Poteau	30,226	26,994	5,136	5,363	12.0	6.2	7.4
Sand Springs	52,184	47,377	10,443	10,643	10.1	39.1	32.5
Sapulpa	48,650	46,349	9,505	9,826	5.0	38.6	33.7
Seminole	22,470	20,953	4,079	4,411	7.2	12.5	15.0
Shawnee	124,294	116,175	21,437	21,864	7.0	4.8	-0.1
Stillwater	98,802	91,816	17,658	17,004	7.6	6.8	5.4
Tahlequah	44,962	39,746	7,623	7,896	13.1	5.3	2.9
Tulsa	1,335,677	1,211,708	231,231	238,888	10.2	5.1	10.5
Watonga	7,779	7,202	1,391	1,517	8.0	8.8	14.8
Weatherford	35,236	34,075	5,894	6,241	3.4	3.0	4.8
Wewoka	5,970	5,970	1,068	1,129	0.0	16.8	15.0
Woodward	54,387	49,484	9,552	9,908	9.9	7.9	8.7
Total Selected Cities	5,335,354	4,934,910	937,928	970,709	8.1	7.9	10.2

Sources for all tables: Local utilities companies; 10th Federal Reserve District Member Banks; Federal Home Loan Bank of Topeka; Oklahoma Employment Security Commission; United States Department of Commerce, Construction Statistics Division; Oklahoma Department of Transportation, *Progressive Report of the Transportation Director;* Center for Economic and Management Research, College of Business Administration, The University of Oklahoma. The data for all tables were compiled by John McCraw, Statistician for CEMR and Brian Hickey, Data Analyst.

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ENID AND LAWTON MSAs

Category	6 Mos. '90	6 Mos. '89	June '90	Percentage Change 6 Mos. '90/'89	Percentage Change June/May '90
ENID MSA					
Employment (Number)					
Labor Force[a]	27,596	27,738	28,700	-0.5	2.9
Total Employment	26,637	26,300	26,675	1.3	-0.2
Unemployment Rate (%)	4.5	5.2	3.6	—	—
Wage and Salary Employment	21,500	21,400	21,800	0.5	1.9
Wholesale and Retail Trade	6,300	6,100	6,400	3.3	1.6
Manufacturing	1,500	1,600	1,500	-6.3	0.0
Industrial Power Sales (000 Kwh)	221,161	224,131	39,290	-1.3	[illegible]
PERMIT-AUTHORIZED CONSTRUCTION					
Residential—Single Family					
Dollar Value ($000)	1,619	538	480	200.9	—
Number of Units	16	5	5	220.0	—
Residential—Multi Family					
Dollar Value ($000)	0	300	0	—	0.0
Number of Units	0	6	0	—	0.0
Nonresidential					
Commercial ($000)	321	1,059	24	-69.7	-3.7
Industrial ($000)	50	0	0	—	0.0
Institutional ($000)	0	0	0	0.0	0.0
Nonbuilding					
Streets and Highways ($000)	1,940	4,372	314	-55.6	—
All Other Nonbuilding ($000)	73	131	39	-44.3	129.5
Total Construction ($000)	4,003	6,401	857	-37.5	E
LAWTON MSA					
Employment (Number)					
Labor Force[a]	48,538	47,696	50,600	1.8	2.6
Total Employment	45,833	45,233	48,050	1.3	3.4
Unemployment Rate (%)	5.6	5.2	5.0	—	—
Wage and Salary Employment	34,800	34,000	34,900	2.4	-0.3
Industrial Power Sales (000 Kwh)	105,598	97,127	19,648	8.7	8.9
PERMIT-AUTHORIZED CONSTRUCTION					
Residential—Single Family					
Dollar Value ($000)	3,865	3,805	538	1.6	62.3
Number of Units	39	38	5	2.6	25.0
Residential—Multi Family					
Dollar Value ($000)	0	0	0	0.0	0.0
Number of Units	0	0	0	0.0	0.0
Nonresidential					
Commercial ($000)	4,105	1,772	0	131.7	0.0
Industrial ($000)	2,470	191	0	E	0.0
Institutional ($000)	0	0	0	0.0	0.0
Nonbuilding					
Streets and Highways ($000)	422	567	225	-25.5	—
All Other Nonbuilding ($000)	0	3.8	0	—	0.0
Total Construction ($000)	10,861	6,372	763	70.5	130.0

Note: Includes revisions.

[a]Civilian Labor Force.

E = Exceeds 600 percent.

MUSKOGEE MA

Category	6 Mos. '90	6 Mos. '80	June '90	Percentage Change 6 Mos. '90/89'	Percentage Change June/May '90
Employment (Number)					
Labor Force[a]	30,525	30,738	31,050	-0.7	1.4
Total Employment	28,425	28,275	29,200	0.5	2.2
Unemployment Rate (%)	6.9	8.0	6.0	—	—
Industrial Power Sales (000 Kwh)	88,342	84,300	14,687	4.8	-4.8
Port of Muskogee					
Tons in	35,287	56,731	2,734	-37.8	E
Tons out	67,413	25,785	17,174	161.4	E

Note: Includes revisions.

[a]Civilian Labor Force.

E = Exceeds 600 percent.

TULSA MSA

Category	6 Mos. '90	6 Mos. '89	June '90	Percentage Change 6 Mos. '90/'89	Percentage Change June/May '90
Employment (Number)[a]					
Labor Force[b]	345,200	335,500	360,400	2.9	2.8
Total Employment	325,600	313,500	342,900	3.9	3.5
Unemployment Rate (%)	5.7	6.6	4.9	—	—
Wage and Salary Employment	312,900	301,200	318,700	3.9	0.8
Manufacturing	53,700	52,300	54,500	2.7	0.9
Mining	12,300	12,400	12,400	-0.8	0.8
Government	37,300	37,000	38,300	0.8	0.3
Wholesale and Retail Trade	74,400	71,900	75,800	3.5	0.8
Average Weekly Earnings					
Manufacturing ($ Per Worker)	464.60	421.64	463.68	10.2	-0.5
Industrial Power Sales (000 Kwh)	1,209,598	1,151,217	216,229	5.1	7.7
Air Transportation					
Passengers Enplaning (Number)	726,951	676,778	140,264	7.4	4.2
Passengers Deplaning (Number)	735,954	690,765	141,137	6.5	3.9
Freight (Tons)	16,181	13,004	3,034	24.4	4.8
Water Transportation					
Tulsa Port of Catoosa					
Tons In	256,778	328,605	46,266	-21.9	248.2
Tons Out	616,503	552,843	81,284	11.5	55.1
PERMIT-AUTHORIZED CONSTRUCTION					
Residential—Single Family					
Dollar Value ($000)	75,119	74,317	11,282	1.1	-10.1
Number of Units	933	933	138	0.0	-11.0
Residential—Multi Family					
Dollar Value ($000)	9,047	82	8,971	E	—
Number of Units	302	4	300	E	—
Nonresidential					
Commercial ($000)	33,804	15,807	1,272	113.9	-70.3
Industrial ($000)	56,424	11,163	166	405.5	-97.2
Institutional ($000)	4,385	10,541	0	-58.4	—
Nonbuilding					
Streets and Highways ($000)	5,145	19,463	2,540	-73.6	279.2
All Other Nonbuilding ($000)	1,903	1,642	521	15.9	251.5
Total Construction	185,727	133,014	24,652	39.6	4.5
General Business Index	97.8	92.4	97.9	5.8	-0.5

Note: Includes revisions.

[a]Preliminary.

[b]Civilian Labor Force.

E = Exceeds 600 percent.

OKLAHOMA CITY MSA

Category	6 Mos. '90	6 Mos. '89	June '90	Percentage Change 6 Mos. '90/'89	Percentage Change June/May '90
Employment (Number)[a]					
Labor Force[b]	505,600	496,200	521,300	1.9	1.9
Total Employment	480,000	471,300	498,300	1.8	2.5
Unemployment Rate (%)	5.1	5.0	4.4	—	—
Wage and Salary Employment	428,600	419,500	431,000	2.2	-0.5
Manufacturing	47,600	48,700	47,900	-2.3	1.1
Mining	10,800	10,900	10,500	-0.9	-1.9
Government	103,200	99,400	101,500	3.8	-3.5
Wholesale and Retail Trade	103,400	102,800	104,200	0.6	0.2
Average Weekly Earnings					
Manufacturing ($ Per Worker)	488.49	491.65	498.17	-0.6	8.3
Industrial Power Sales (000 Kwh)	611,336	603,768	104,858	1.3	1.1
Air Transportation					
Passengers Enplaning (Number)	757,527	739,222	144,337	2.5	2.0
Passengers Deplaning (Number)	773,851	745,122	150,833	3.9	4.0
Freight Enplaned (Tons)	5,258	3,737	965	40.7	7.8
Freight Deplaned (Tons)	7,440	4,757	1,289	56.4	-7.7
PERMIT-AUTHORIZED CONSTRUCTION					
Residential—Single Family					
Dollar Value ($000)	111,068	85,111	20,730	30.5	-18.9
Number of Units	1,284	974	239	31.8	-14.0
Residential—Multi Family					
Dollar Value ($000)	670	21,116	0	-96.8	0.0
Number of Units	32	482	0	-93.4	0.0
Nonresidential					
Commercial ($000)	20,971	19,901	4,267	5.4	-39.6
Industrial ($000)	1,431	2,454	20	-41.7	-44.4
Institutional ($000)	2,065	6,269	196	-67.1	6.8
Nonbuilding					
Streets and Highways ($000)	57,837	12,885	12,466	348.9	149.2
All Other Nonbuilding ($000)	1,375	1,256	278	9.5	-31.3
Total Construction ($000)	195,416	148,992	37,956	31.2	-0.8
General Business Index	95.2	95.0	96.9	0.2	5.6

Note: Includes revisions.

[a]Preliminary.

[b]Civilian Labor Force.

Business Highlights

DAVID PENN

THE ECONOMIC RECOVERY that began in 1988 continued during the first six months of 1990 but with some important differences. For example, the manufacturing sector no longer supplied a major growth impetus for the state's economy, reflecting national weakness in this sector. Instead, the fastest growing sectors for employment included mining, retailing, and construction. Manufacturing employment rose just 0.8 percent from the first six months of 1989, while employment in the mining, construction, and retail sectors grew by 4.0 percent, 3.5 percent, and 1.9 percent, respectively. The virtual absence of employment gains in government kept total wage and salary employment growth down to a modest 1.2 percent from one year earlier.

The labor market continues to improve: the unemployment rate dropped to an average of 5.7 percent during the first half of 1990, compared with 6.2 percent one year earlier. The decline in the unemployment rate was particularly encouraging since it was caused by a strong rise in employment and not a drop in the labor force due to outmigration. Further drops in the unemployment rate should continue in 1990, but at a much slower rate of improvement due to the increased amount of slack in the U.S. economy.

Retail sales in the Tulsa, Oklahoma City, Enid, and Muskogee metropolitan areas showed remarkable percentage gains, with more modest increases statewide. Retail sales in the Oklahoma City metropolitan area grew 7.6 percent from a year earlier and 9.7 percent more than the second half of 1989, seasonally adjusted. Seasonally adjusted sales in the Tulsa metropolitan area jumped 9.1 percent compared with the first six months of 1989 and rose 7.0 percent from the second half of 1989. Similarly, sales in Enid and Lawton gained 7.2 percent and 8.0 percent, respectively, from the first half of 1989.

Interestingly, sales from lumber stores and apparel sales grew at or near double digit rates in four of the five metropolitan areas. General merchandise experienced large gains in the Tulsa, Enid, and Muskogee areas with increases of 13 percent or more.

Metropolitan area sales should continue their strong performance through July, with slower rates of growth expected during the third and fourth quarters of 1990. The large increases in fuel costs that began in August will take a toll on the consumer, undoubtedly resulting in slower increases in discretionary consumer purchases during the third and fourth quarters of 1990.

Large percentage gains appeared to be reasonably widespread among the 48 individual cities that are tracked in the *Oklahoma Business Bulletin*. Compared with the first half of 1989, 30 cities experienced increases of 7 percent or more; 13 of these cities enjoyed increases of at least 10 percent.

Statewide, however, retail sales increased by a moderate 5.5 percent from the first half of 1989. Compared with the second half of 1989 seasonally adjusted sales dropped slightly, falling by 0.5 percent.

As for construction, the total value of contracts increased 10.4 percent from the first half of 1989. The biggest gains occurred in the commercial, industrial, and residential single family categories. Virtually all the increase in the number of new single family homes occurred in the Oklahoma City metropolitan area, while the Tulsa area experienced most of the dollar increases

in commercial and industrial construction.

During the next six months, the Oklahoma economy will probably experience continued growth, but at a slower pace. Higher oil prices will exert a negative net influence on economic activity, raising transportation costs for households, businesses, and government. The oil and gas production sector will eventually increase activity in response to higher prices, but this response will require a number of months and a perception of permanently higher, stable oil prices.

Further weakness in the national economy will, of course, slow the Oklahoma economy even more. However, if the U.S. economy should slip into recession during the next six months, the Oklahoma economy should perform relatively well compared with most other states. The business sector in Oklahoma survived the very lean years from 1982 to 1988 by cost cutting and downsizing. And businesses have expanded only gradually during the period of growth from 1988 to 1990. Thus, Oklahoma businesses should not require drastic measures in order to adapt to a renewed period of economic slack.

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An Analysis of Oklahoma's Economy

CRAIG KNUTSON

THE FOLLOWING IS AN ANALYSIS of the economy for Oklahoma and its two largest metros during the 2nd quarter 1990. The analysis will cover six subsectors of the economy, with the energy subsector carrying the greatest amount of weight first, followed by the remaining subsectors in decreasing importance to the GBI. A look at the 3rd quarter 1990 is offered based upon preliminary data and professional intuition.

Energy

The Energy Subsector declined 0.3 percent from the 2nd quarter of 1989 and was off 2.7 percent from the 2nd quarter of 1988. This quarter's decline continues a significant string of year-over-year declines, signifying that the energy sector, without a violent jolt, isn't likely to improve. Luckily for the industry (not for the consumer), the "jolt" occurred in the 3rd quarter, of which I will discuss later in this section. However, through the 2nd quarter, bad news was as plentiful as the supply of oil, which helps explain why the news was so bad!

Three of the five variables used in the analysis of this Subsector actually posted year-over-year gains. The overall decline of 0.3 percent (which, by the way, is quite insignificant) is attributable to a sizeable decline in gross production tax collections (-13.3 percent) and a smaller decline in Intent-to-Drill Permits (-4.4 percent). Those declines were not enough to offset gains in rig activity (+7.6 percent), employment in oil and gas extraction (+3.6 percent), and seismic crew activity (+2 percent). Heading into what is traditionally a very weak quarter, the indicators were typically mixed, with a downward trend quite noticeable.

At the beginning of the 2nd quarter, *Business Week* ran an article entitled "The Saudis make ready to open the Spigots." The article dealt with production declines in the U.S. and the U.S.S.R. and how the 1990s will be a seller's market for oil. Given the unforeseen Iraqi invasion of Kuwait four months later, the article should have lessened the fears the energy futures markets reflected in August and September. The Saudis are *capable* and *willing* to increase production, whether for domestic- or foreign-policy purposes. Oil prices have risen from a 2nd quarter low of $14+/barrel to $28+/barrel levels today, and that increase has been very beneficial to the Saudi economy, regardless of the cause. The 2nd quarter was difficult for energy producers due to warmer weather, flat demand (weaker economic growth), and overproduction on the part of OPEC (over 24 million barrels/day at one point). By the end of June, Oklahoma oil prices had reached an 18 month low ($15.25), over $7/barrel lower than just 5 months ago. Oh, volatility...! And we wonder why investments in the energy sector are so hard to come by!

While the President was ordering a ban for offshore drilling at the close of the 2nd quarter, natural gas drilling in the Arkoma Basin was booming (despite depressed prices). While the year-to-date production levels for oil were off almost 9 percent through June, natural gas was off a scant 1 percent, with production on the rise. The drilling must be a function of longer-term profitability potential, because natural gas prices in Oklahoma hit a five and one-half year low in August, dropping to $1.20/million BTU. Sluggish demand and intense competition were the primary culprits, factors that other commodity and non-commodity items face

day to day as well. Prior to the Iraqi invasion, the "World Oil" Survey was predicting a 17.4 percent rise in oil and gas drilling in Oklahoma during the 2nd half of 1990. While that estimate might now seem low in light of recent international trends, rig counts during the month of August never reached the 130 level. With July's numbers equally weak, 17.4 percent might be optimistic!

Intuitively, however, rig activity should show substantial improvement given the price escalations during the past seven weeks. On July 25, Oklahoma Sweet was selling for $19.50/barrel; by August 6, Sweet was selling for $26.75. Seventeen days later, the price had reached $30.75/barrel. Thus, in a matter of a month, oil prices had risen 58 percent. Gasoline prices (at the pump), however, had risen a little more than 30 percent. Gas Pump Economics 101 (replacement costs) and Market Capitalism tell us that we, as consumers, have not paid the full price of the refined product we use for transportation, despite the healthy increases we've already faced. While this is not a defense of the oil industry, the facts are that the "last-in first-out" method of accounting inventory causes companies to price their product according to the cost of replacing them, not according to historical cost. The debate continues as to "who's ripping who," but the reality is that prices have risen at both ends of the chain (crude and refined). The bigger question now seems to be that we've entered "Oil Crisis III" without an energy plan; do we prepare to plan now or wait for "Energy Crisis IV?"

What impact will the Energy Subsector have on the 3rd quarter GBI? A positive one, but not nearly as strong as many might expect. Two reasons. One has to do with investment, the other with production. From an investment standpoint, who is going to finance the next "energy boom" in Oklahoma? Not the banks; not here in the state and certainly not those in Seattle, Chicago, New York, etc. Since Penn Square went under in July 1982, 110 banks have failed in this state. Many of those failures were tied directly to energy; many others indirectly (especially real estate investments due to expected $40-50 oil and continued in-migration). The banking community is not only more conservative, but the tax codes have changed and most institutions are much less healthy (financially). The combination does not bode well for those seeking to take advantage of higher oil prices. Long-term stability is almost a requirement of financial institutions. The energy industry has not, historically, been able to meet that criterion. With prices still gyrating around as we end the 3rd quarter, the banking and investment community will remain wary (and rightfully so).

The second reason has to do with production. Not only are reserves more plentiful than they've ever been, but as late as July 30, reports like "OPEC May Face Long Wait To See Higher Oil Prices" were the rule not the exception. While Iraq was demanding $21/barrel oil (up from the OPEN-agreed $18 level), realities such as "bloated inventories," weak demand," and "quota cheating" were affecting Iraq's stated desire for higher oil prices. As William Hermann, Chief Economist of Chevron Corp., stated the day before the Iraqi invasion: "Reality has set in. There's a big overhang of stocks; there's a lot of oil out there." Despite the 4+ million barrel/day taken off the market since the invasion, OPEC and non-OPEC producers have agreed to make up the difference. Even the State of Texas has agreed to raise its production levels, permitting oil wells to produce beyond their restricted levels for 90 days. If that is not enough, the Saudis have discovered rare deposits of a rare, super-light oil that "may be the biggest field in the world." Conservative estimates are that the Saudis will have the capacity to produce up to 10 million barrels/day before 1994; its OPEC quota is 5.4 million barrels/day and its September production level is 7.2 million barrels/day. Supply-demand imbalance, continued!

The loss will be made up and demand, at these higher prices, will decline. The combination of the two will yield lower prices, even as we approach the winter season. "Fear" is controlling prices more than "market conditions" themselves. Controlling 4.3 million barrels/day of oil production does nothing for Saddam Hussein if he can't sell it. As an energy economist recently wrote: "Saddam may be evil, but he is not stupid. He does not want to seize the oil fields only to leave them idle. He wants them so he can sell their oil." I look for a quick end to this situation, with oil prices falling back to the $20-23 level before year's end. If that occurs, the Energy Subsector will have little positive impact on the GBI. If, however, prices remain high, the Subsector will provide a boost to the GBI, only to be taken away due to decreased activity in the consumer and export sectors of the state's economy. Lower oil prices are *good* for Oklahomans as well.

Manufacturing

The Manufacturing Subsector posted a 7.4 percent increase over the 2nd quarter of 1989. The rise was attributable to gains in employment, purchases of industrial machinery, and a decline in weekly hours worked. The latter indicator is negatively correlated in this model, meaning that a decline in weekly hours worked boosts the Subsector. During "good times," manufacturers hired new workers, instead of working longer hours. Just the opposite was true when economic conditions worsened. Employers, not wishing to incur additional costs due to training and benefits, worked their employees longer. In general, the Manufacturing Subsector reversed the trend of previous quarters, bucking the national trends.

As we approach the end of the 3rd quarter, it is useful to reflect back to the early 80s when the chants of "U.S. Manufacturing is Dead" were so prevalent. We are beginning to hear them again. Premature? I think so. *The Wall Street Journal* ran an article in early August stating that "Factory Orders In June Slipped By a Steep 1.5 Percent." While that article may be factually correct, the word "steep" did not need to appear. The article for the previous month simply stated that "Factory Orders Were Up 2.1 Percent During May." Not sharply up, just up. By the way, the May number was revised "up" .1 percent and the July number showed an "increase" of 1.6 percent. Similar trends were found in the durable goods industry, with March's number up 6.7 percent, April's down 4.2 percent, May's up 4.2 percent, followed by June's decline of 3.2 percent, then July's 2.9 percent rise. The net effect is about a 4 percent increase since April. What all the numbers say is that, since April, the manufacturing sector, as measured by output, is "up." So, while the U.S. has lost over 300,000 manufacturing jobs since the beginning of 1989, factory orders (therefore, imported capital) continue to expand. Output per employee is expanding, signifying that the investments in new plant, equipment, and training of the past are yielding the productivity gains we are now seeing in many of the manufacturing numbers.

The keys to future growth in the industry are the trade-weighted value of the U.S. dollar, the strength of foreign markets, the quality of products/services, and productivity gains. The dollar continues to weaken against the Pound, the Yen, and the Mark. For those businesses that do a lot of business overseas, the slumping dollar has been profitable. The weak dollar gives U.S. exporters a price advantage against foreign competition, while also making foreign profits fatter when translated into dollars. With many foreign economies growing much faster than our own, exporting makes good "cents." Furthermore, foreign exporting has a substantial positive impact on employment. According to a recent study done by Villanova University on export employment multipliers, "in the aggregate, the foreign export employment multiplier was almost five times larger than the domestic export multiplier." That alone should prod businesses and governments into globalizing their companies and outlook.

Here in Oklahoma, the manufacturing sector continues to grow, both in terms of output and employment. The Oklahoma DOC reported that over $128 million in new and expanded manufacturing investment was announced in the 2nd quarter of this year. The investment numbers are: $191 + million and over 2,200 jobs. While the YTD totals for 1990 are well below 1989 levels, that is a function of a strong 1989, the largest first half investment total in the decade of the 80s. The strong announcement numbers reported over the past several years are a primary reason why our manufacturing base has expanded, not declined as the nation has done. Quality-driven companies, both large and small, have positioned themselves within the global marketplace, and, in so doing, have eluded the layoff and closing syndrome faced by so many. Whether it's autos, tires, or hard drives for computers, Oklahoma manufacturers have competed very well.

The recently released Grant Thornton Manufacturing Climates Study provided some explanations as to why we have been relatively more successful; our business climate has improved. We have a low tax burden (13th lowest), energy costs (4th lowest), and have made positive improvements in several governmental and labor costs categories. Unfortunately, our state ranked 40th in the "availability and quality of education." As the report stated, education ranked second only to wages as the most important variable: "Manufacturers are also feeling the pinch of educational systems that produce workers that can neither read, write, nor perform simple arithmetic. Teaching their employees such basic skills is a substantial cost." In the 1988 report, education ranked 8th in importance. Next year, it may be number one.

As some of us in the economic development area have been saying for quite some time, if low tax burdens and energy costs were the primary engines of industrial growth, we would be an economic oasis. Productivity gains are the key to our nation's competitiveness, and productivity means investment in human and physical capital (people and equipment), not reductions in costs. Even the manufacturers of this country are recognizing that. A recent article written by Edmund Faltermayer for *Fortune* closed with this: "Japan and West Germany have proven that a country with a superior labor force needs neither raw materials nor Lebensraum. It's a bit like the real estate man's classic rule about location. The way to keep American industry from being submerged in the rising tide of world competition is education, education, education."

In conclusion, it is important to note that the National Association of Purchasing Managers monthly gauge of manufacturing health has been below the magical 50 percent level 13 of the past 16 months (only the 2nd quarter months provided numbers above 50 percent). We continue to lose market share to foreigners as well. But, when market shares used to be 90-96 percent, depending upon the industry, some loss has to occur. It is important to note that, despite all the negative numbers, the manufacturing sector today contributes just about the same proportion of total output of the American economy as it did three decades ago. And in that period, the economy has grown more than four times. Manufacturing may be weak, but it's not dead!!

Consumer Demand

The Consumer Demand Subsector posted a 0.9 percent improvement from last year's level, continuing a positive growth trend for the state as well as both metros. Despite a meager 0.4 percent decline within the General Merchandise area, both the Apparel and the overall Sales Tax Collection numbers were up (all numbers are adjusted for both tax rate increases and inflation). Tax collection and retail trade numbers were also up in both Oklahoma City and Tulsa. Their performances far outstripped the 1-2 percent increases seen in the statewide numbers, signifying that rural to urban migration patterns continue. People migrate to where employment and wage opportunities are greatest. According to the help wanted indexes in both metros (especially Tulsa's), there is little wonder why these areas are demonstrating relatively strong consumer patterns.

The Conference Board's Consumer Confidence Index peaked in April and then fell (in June) to a level that was 12.5 percent below 1989's level. The Conference Board breaks the U.S. into nine regions. In the 2nd quarter, only three regions posted year-over-year gains, and the West South Central was one—up 9 percent (the West North Central and Mountain were the others). The biggest decliner by far was New England, down a whopping 51 percent! The theory of "rolling" or "regional" recessions is far more credible as we continue to grow overall yet see regional fluctuations of this magnitude.

The Oklahoma consumer demand numbers were, for the most part, double digit increases when compared to a year ago (nominally speaking). The Governor, the Finance Director, and the mayors of our largest metros were all elated with the rates of growth, exceeding even their expectations. With personal consumption representing almost two-thirds of GNP (and a like percentage here), Oklahoma's growth rate (albeit slight) is easily explainable. There were 1,172,300 workers in the State of Oklahoma at the close of the 2nd quarter; that is 65,500 more workers than just three years ago. With more workers, working at slightly higher real wages, having a relatively healthy outlook on the economy (especially now with $30+ oil!), is it any wonder why the GBI continues to expand? For the first half of the year, tax collections returned to Oklahoma City and Tulsa were up 13.5 percent and 11.6 percent, respectively. The State's increase was 11.8 percent.

So, despite sluggishness at the national level, with auto sales down and future concerns about the economy up, Oklahoma's consumers are enjoying their disposable incomes much more. Being employed, more credit conservative than most, and not impacted as severely by the high costs of living afflicting the two coastal areas, the outlook for the immediate future is, *relative to others*, bright. With U.S. personal income growth in July at 0.6 percent and spending up 0.5 percent, the consumer hasn't thrown in the towel. Installment payments as a percent of overall disposable income is declining and delinquency rates on various forms of credit are too. Debt service is still a problem among consumers, but much less so in this state.

Construction

The Construction Subsector was unchanged from last year, which means there is still very little new activity occurring in the state. Again, that is a positive indicator. While we have had healthy job gains, nowhere is the principle of "supply/demand imbalance" more apparent that in the real estate markets of this state (for that matter, of this nation). The supply of units/space is still so plentiful that, with the exception of perhaps the industrial sector, little new activity is justified, and, therefore, expected.

The indicators offset one another this quarter. While residential permit activity and tax collections on the sale of building material showed gains of 4.4 percent and 2.9 percent, respectively, nonbuilding activity declined (surprisingly) 4.5 percent and nonresidential activity was off 27.8 percent. The latter's weight in the Subsector is less than the other indicators, thus its sizeable decline made very little difference. With bond issues and sales tax increases at the local level up, expect to see more "infrastructure" activity in the upcoming quarters. In fact, the 2nd quarter numbers were, compared to 1988 2nd quarter numbers, up over 36 percent in current dollar terms, so the decline is more a function of an unusually strong 1989 level than a weak 1990 level. One has to be very careful when working with percentage changes. Our *annual* totals for new residential activity in the 1987-1989 period match some *months* in 1982-84 period!

Since peaking in January of this year, national housing starts have plummeted for six consecutive months, from an annual rate of 1.58 million units in July. The July level is the lowest since September 1982's level of 1.14 million units. Credit restrictions, over-building, high mortgage rates, and worsening consumer confidence all impact the trends. Residential building permit activity in the Oklahoma City metro was up 1.7 percent YTD through June and is up 3 percent YTD through August. A similar "slow growth" trend is present in Tulsa. The national decline reflects the worsening employment and expectations environment on the East Coast; our improvements are indicative of the overall economy: modest, unsensational growth.

Mortgage rates, which ranged from 10-10.6 percent during the 2nd quarter, have contributed significantly to the poor home sales performance, whether new or existing. By July, the rates fell (briefly) below the 10 percent level and homes sales, naturally, rose.

Unfortunately, as we approach the end of the 3rd quarter, mortgage rates have risen to the 10.25 percent level, causing the housing affordability index to fall. The Iraqi invasion is being blamed for the higher rates, due primarily to increased oil prices and its expected negative impact on inflation. If the mortgage rate itself doesn't get you, the discount points will. So, the 3rd quarter has not been kind to the construction or home buying markets.

Despite the nationwide problems, home sales locally have continued to grow. While the 2nd quarter numbers show only a 1 percent gain over last year's levels, they are up almost 14 percent from 1988 levels. Furthermore, home sales for the first two months of the 3rd quarter are up over 8 percent from last year. As usual, Oklahoma City and Tulsa, with median home sales prices at $54,100 and $64,400, respectively, continue to be a national bargain. In fact, there is no city in Oklahoma City's population range that has lower priced housing. For example, with the national average at $96,200, Oklahoma City is 22 percent below the national average, 75 percent below Los Angeles, 64 percent below Washington, D.C., and 69 percent below New York. And those three don't have the highest priced housing values in the U.S.!!! That dubious honor goes to Honolulu at $345,000, followed by Anaheim at $248,900. There is a great deal of value in Oklahoma housing.

Finally, one last note on the industry. With rising oil prices comes increased gross production tax collections. In the past, the windfall from the higher energy prices went entirely into the general fund for operating budgets. But, under a law enacted in 1989, the additional revenue (tax collections over $190 million) will go into the Capital Preservation and Economic Enhancement Fund. This fund was set up to address infrastructure needs of the state. So, should prices remain at their current levels and the cap be exceeded, money will be set aside for infrastructure improvements. Throughout the last half of the 80s, "nonbuilding" construction was the most active area of the industry. With the infrastructure problems this state and national face, such a fund should come in very handy and should provide construction jobs for many years to come. And we're told that government has no foresight!!

General

The General Subsector continues to show strength, rising 4.3 percent above 1989 levels and 12.6 percent above 1988 levels. With the exception of two banking indicators (Bank Stock Index and Net Income of the two largest publicly-traded banks in Oklahoma), every indicator posted gains. The two employment indicators (Wage and Salary and Services Employment) were up 1.4 percent and 2.4 percent, respectively. The unemployment rate has dropped from a quarterly average 5.8 percent last year to 5.1 percent this year. Total statewide bankruptcies are down 2.4 percent (although still high historically speaking) and unemployment insurance claims fell 1.7 percent. Finally, and perhaps most importantly, total personal income was up 3.4 percent in the 2nd quarter, continuing a string of quarterly increases dating back to 1986. In Oklahoma, jobs are being created and total and disposable income is rising, despite what you may have heard. Four years ago in this space, I was playing down our declining unemployment rate, because we weren't seeing wage and salary employment grow at the same time. Those two indicators have been moving opposite one another for over three years. That relationship indicates growth (see Figures 1 and 2).

As we began the 2nd quarter, the national debt passed the $3 Trillion mark; you just knew this was a harbinger of things to come. Sure enough, companies reduced their capital spending budget forecasts, our major trading partners were raising their interest rates, the employment, help wanted index, and retail numbers remained weak, and the Commerce Department said GNP (through its preliminary estimate) rose a scant 1.2 percent, down from the 1st quarter 1.7 level. To top all that, there was (and is) a growing nationalistic or protectionistic sentiment against foreign investment, when foreign investment in this country is one of the few growth generators we have. As Norman Glickman, a Rutgers University economist recently wrote: "Does a cluster of Japanese auto factories keep car prices down, improve worker productivity, and bring technology to the country? Probably it does." With the dollar's value weak, foreign investment will continue. In the last week, two Japanese companies announced major investments. One was the purchase of Pebble Beach Company; the other was Toyota's announcement of a second car assembly plant. All in all, a rough quarter for America.

Or was it? A recent *Wall Street Journal* editorial mentioned that "the economy can grow in two ways: putting more people to work or by making each worker produce more." Since demographics are no longer on our side with respect to the former, it is on the latter that this country must focus. They go on to say that "greater productivity is the primary engine of growth." That statement has always been true, but never has it had more relevance than today. With all the negatives we've faced and read about so far this year, the U.S. Department of Labor reported that productivity, which had declined for five consecutive quarters, jumped 1.5 percent in the 2nd quarter.

Only time will tell whether this gain is an aberration or the beginning of a trend, but the investments in new technology, equipment, training, and education (be they domestic or foreign) may be paying dividends. We have known for a long time that America boasts the highest manufacturing productivity in the world. In fact, on a

per employee basis, economic output in Japan last year was 72.7 percent of the U.S. level; Canada was the closest at 94 percent!! As more U.S. companies (and foreign transplants), in both services as well as manufacturing, find new ways of spurring productivity, the economic statistics we analyze each day will improve. As Michael Porter argues in his new book *The Competitive Advantage of Nations*, the only useful measure of national economic strength is the rate of national productivity growth. I think he may be onto something!

Every major print publication has run at least one article on "Are We In A Recession?" *The USA Today*, in an August 10 article implied that we already are: "Recession expected to be mild." With exports (both services and manufactured) running at record levels, businesses still planning to invest (albeit at a lesser rate), the government running a $230+ B deficit, and the consumer still making purchases, ... I don't know, is there a recession going on? GNP is comprised of consumer purchases, government purchases, and business investments, plus or minus trade. While 1.2 percent growth is meager, it still is growth. As Ed Yardeni recently stated: "I don't think a recession is inevitable." And given the deftness with which the Fed has skirted earlier trouble spots, Greenspan et al., with the help of stepped-up military spending, should be able to steer the economy safely away from a recession.

Again, the trade-weighted value of the dollar and the strength of the international economy will determine, in the short-term, what sign our GNP growth rate numbers will have in front of them. In the long run, however, productivity gains, within industries and occupations, will need to take place before market share decline and standards of living improve. The Global Race is here. Competing successfully in the areas of quality and cost will only come through investment in productivity-enhancing technology, processes, and training. Ultimately, all these indicators (if you can even rely upon them) are a reflection of productivity. While the leading economic indicators for the nation point to more stagnation and weakness, Oklahoma's "general" set of indicators should improve once more. You know things must be improving when you find Oklahoma ranked #1 in a positive economic comparison: Oklahoma leads the nation in "Year-End FY 1991 Balances as a Percent of Spending." There are only 11 states with a projected balance of greater than 5 percent; we lead the nation at 12.9 percent, while the national average sits at 2.3 percent. Two cheers for Fiscal Responsibility!

Agriculture

The Agricultural Subsector, hit by weak grain prices, continues to show year-over-year declines. The 2nd quarter value was down 2.8 percent, primarily due to a 23 percent drop in wheat prices. Sorghum prices also posted a decline (-5 percent). Luckily, beef prices helped offset the crop weaknesses by expanding 6.6 percent from last year's levels. The commodities portion of our economy, at least until August 1st of this year, has been a negative contributor.

Why are wheat prices so puny? Remember our earlier discussion of "supply/demand imbalance?" Let's return to that subject. In July, the Agricultural Statistics Board released their estimate of the 1990 wheat crop: 207.9 million bushels. By itself, that means little. But when you compare it to the 1989 level of 153.9 million, you begin to understand what a 35 percent increase can do. The yield went from 27 bushels/acre to 33 bushels/acre in 1990 and the amount of harvested acreage from 5.7 million acres to 6.3. Increased yield on an increased number of acres, results in ... a lot of wheat. And since wheat is traded internationally and exports are a primary motive for wheat planting to begin with, what do you think happened internationally? That's right, several key wheat producing countries also had healthy harvests.

In fact, with less than half of the U.S. output used domestically, exports (and export subsidies) are critical. Unfortunately, the international situation is depressing (if you are a producer). Production is up in the Soviet Union and China, two of the largest markets for U.S. wheat. As important, however, is that major U.S. competitors will have large exportable supplies of wheat, with several planning further acreage increases. The E.C. (12 nations), Canada, Australia, and Argentina all had fair to outstanding harvests, so competition will be strong this year. With plentiful supplies and a growing world inventory, expect prices to remain weak. In fact, the USDA expects U.S. stockpiles to be up 52 percent in 1991, while stockpiles outside the U.S. are expected to rise 9 percent. One never knows what Mother Nature has in store, but, at least domestically, it appears that most of the damage from the 1987-88 droughts has disappeared. While there were many who suffered, the USDA is expecting a banner year for farm income, grossing around $165 million this year. That is a 4+ percent increase from 1989.

The beef industry has fared much better than wheat (if you are a producer). After a year of relatively strong prices, the USDA reported that cattlemen will be increasing their animal inventories, which is the natural response to high prices. Analysts have concluded that there will be no more young cattle available for beef production in the next twelve to eighteen months than there was for the last several years. Therefore, any near-term growth in supplies will be small. As Darrell Peel, market economist at OSU recently stated: "Overall, you have to consider it pretty positive for producers in this part of the country." With July's beef price at $75.10, I'd have to go back to the decade of the 1970s to find Oklahoma monthly beef prices that high, if then.

Conclusion

Oklahoma's economy continues to expand. Two indicators that I track quite closely seem to be saying: "slow, but steady, growth." Both wage and salary employment and personal income continue to track upwards. I am forecasting continued growth in Oklahoma, and, since I'm a strong proponent of this state's growing interdependent relationship between national and international economic activity, you might assume I'm *not* forecasting a recession for either the nation or the world. Your assumption would be correct. But keep in mind what Donald Straszheim, Chief Economist at Merrill Lynch & Co., recently stated: "We forecast not because we know, but because we are asked."!!!

As Greg Smith, a financial analyst with Prudential-Bache recently wrote: "More and more economists are starting to forecast a recession. That in itself makes me wary because, in my experience, forecast recessions tend to be no-shows." Let us hope for Greg, myself, and many, many others across this land that he/we are correct. I have delineated, using a forest of statistics, the ills this country faces. From debt and drug dependency to illiteracy and inflation, it often seems the bad outweighs the good. However, according to William Dunkelburg, Chief Economist at the National Federation of Independent Business, "things look bad only because we've had a decade of extraordinary growth. What we are experiencing is a period of slower growth, not a downturn of cataclysmic proportion." There are some very real weaknesses in the economy, but inflation, YTD through July, is at 4.9 percent (less than last year's 5 percent level at this time) and June's wage and salary employment was a full 2 million ahead of June 1989. We are now in a world of "free global capital flows" where money knows no boundaries and the world savings rate is more important than those of individual countries. The Fed, despite the rise in global interest rates, seems to be refocusing their intentions toward sustaining economic growth by lowering interest rates, keeping a careful eye on inflation.

Paul Krugman, MIT professor, has a new book out entitled *The Age of Diminished Expectations*, which seems to fit the mood of most economists and economic pundits. Unfortunately, that attitude has a way of affecting the very groups that have generated the sales, investments, employment. In the semiannual "Sampling of Interest Rate, Economic, and Currency Forecasts" done by the *Wall Street Journal* in July, the consensus forecast of 40 economists was 1.6 percent growth in the 2nd half of this year, followed by 1.8 percent in the 1st half of next year. Only two economists forecasted a declining GNP for the remainder of the year, and only one for the 1st half of next year. The September Blue Chip Economic Indicators were just released (post-Iraqi invasion) and they, too, are forecasting growth for both 1990 and 1991, although 50 percent of the respondents think a recession will begin this year. Bob Eggert's advise to companies: "even more emphasis should be placed on limiting investments to areas sure to *raise productivity* and, of course, keeping inventory levels in line with customer demand."

The most recent set of data has both the unemployment rate (5.6 percent) and productivity up (1.5 percent). David Wessel, in an April *Wall Street Journal* front page editorial, stated: "If productivity were to grow faster, employers could get by with fewer workers—and unemployment would be higher." If the data is to be believed, that is what is occurring. To avert a recession now, substantive reductions to the deficit must occur, interest rates must come down, the dollar must remain relatively low, and the 5 + percent increase in new plant and equipment (as forecasted by U.S. businesses) needs to materialize. If we curtail capital spending, "we won't be building the productivity enhancement and the technology to improve our international competitiveness," said to Joseph Duncan, Dun & Bradstreet's Chief Economist. These capital investments, once made, will continue to yield productivity gains so essential to sustaining long-term growth. But, in the short-term, we need to work smart, pay down our debt, and pray that the economy continues to move sideways, not down!!

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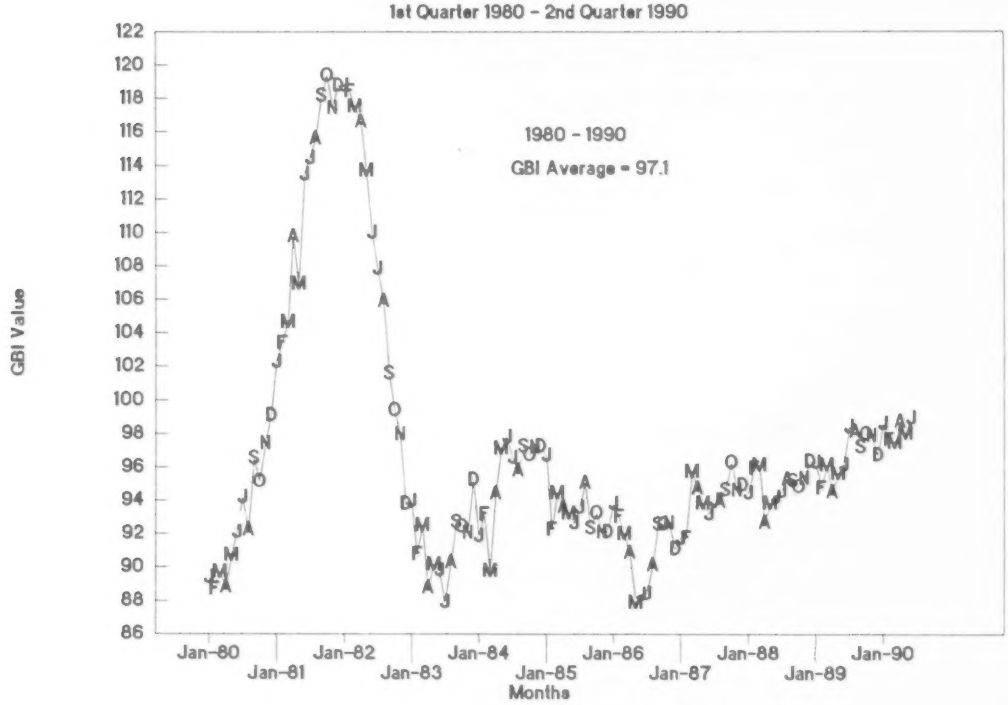
OKLAHOMA STATE GBI

1st Quarter 1980 – 2nd Quarter 1990

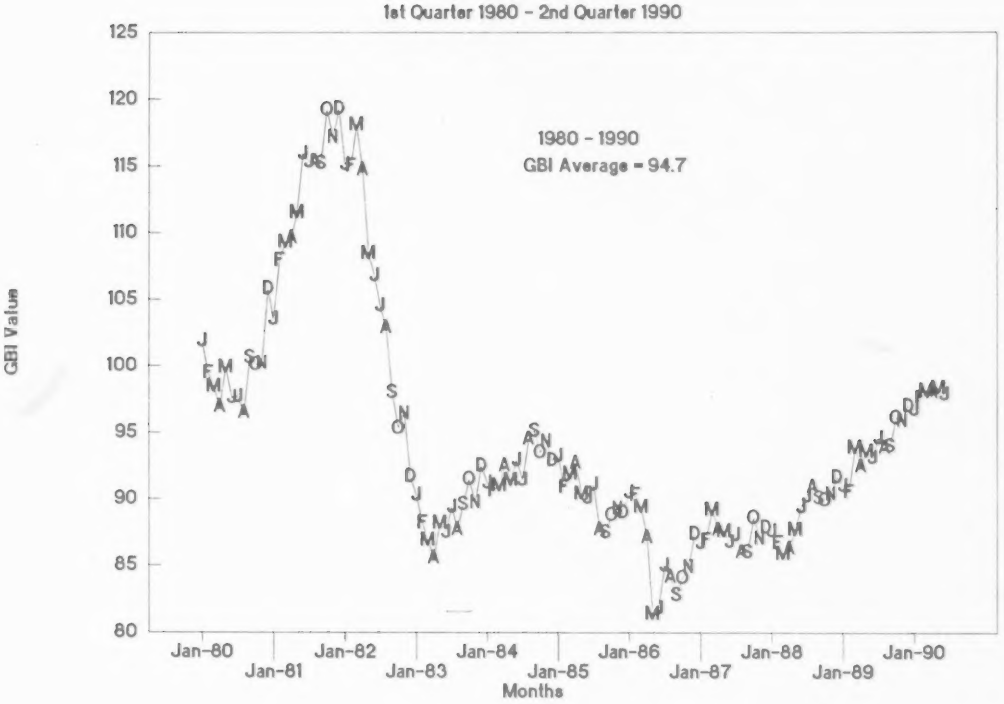


Oklahoma City GBI

1st Quarter 1980 – 2nd Quarter 1990

Tulsa GBI

1st Quarter 1980 – 2nd Quarter 1990



Employment-At-Will in Oklahoma

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Introduction

IN YEARS PAST, EMPLOYERS believed, with judicial support, that they could terminate employees for good reasons, bad reasons, no reasons or even reasons which were considered "morally wrong."[1] The American principle of employment-at-will was generally accepted without question. This follows the precedent of master-servant in English Common Law, where employers were allowed to exercise almost complete control of the employer-employee relationship, i.e. the master had the right to discharge the servant for good, bad, or no reason.[2] Similarly, under the American principle either party to an employment contract of indefinite duration could terminate that contract at any time for any reason or for no reason. However, over the past twenty years, judicial decisions and legislative enactments have eroded the employment-at-will doctrine, leading to confusion and increased litigation regarding wrongful discharge. Since 1980, courts in almost every state have faced wrongful discharge questions and approximately thirty-five jurisdictions now recognize a cause of action for wrongful discharge. In 1986 alone, favorable verdicts were received by the plaintifs in 78 of unsettled wrongful-discharge cases in California, with an average total award of over $400,000.[3]

General Exceptions to Employment-at-Will

Courts have eroded the at-will doctrine by carving out three general exceptions; public policy, breach of implied contract, and breach of the implied covenant of good faith and fair dealing.

(1) Public Policy — an employer may be held liable for wrongfully terminating an employee if the discharge violates public policy. Cases in which the discharge violates public policy include: (a) discharge for refusing to commit an illegal act; (b) discharge for exercising a legal right or privilege; (c) discharge for performing a public obligation; and (d) discharges for motives which violate other "clear mandates" of public policy. The public policy exception is the most widely received exception to the employment-at-will doctrine and the sole exception in some jurisdictions.

(2) Implied Contract — some courts have found an implied-in-fact agreement not to discharge an employee except for "just cause." Employer representations may form an implied contractual basis for changing an at-will agreement into an agreement to terminate only for just cause. Courts have given contractual status to oral employer assurances of job security at the time of hiring; policy statements in personnel manuals also have been interpreted as agreements that employees could only be discharged for just cause.

(3) Implied Covenant of Good Faith and Fair Dealing — in recent years, some courts have adopted an exception that a termination of an at-will employee, not founded in good faith or just cause, violates an implied covenant of good faith and fair dealing in the performance and enforcement of every contract. This exception is based upon the theory that parties to contracts and commercial transactions must act in good faith toward one another. Some states have adopted the rule that good faith is assumed or implied in every contract, including employment contracts.

A 1980 California decision held that an employee's length of service gave rise to an obligation of the employer to terminate the employee only for "good

cause."[4] In Montana, an employee handbook bound the employer to the handbook policies "as a matter of the covenant of good faith and fair dealing."[5]

In *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 316 A.2d 549 (1974), the Supreme Court of New Hampshire held that in all employment contracts, whether at will or for a definite term, the employer's interest in running his business as he sees fit must be balanced against the interests of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two. It further held that a termination by the employer of an employment-at-will contract is not in the best interest of the economic system or the public good where such termination is motivated by bad faith or malice or based on retaliation. (This case involved a female employee who refused advances made by her supervisor and was subsequently discharged — a fact situation which now would fall under Title VII.)

The Massachusetts view, more widely accepted, is that if an employer terminates an at-will employee for the purpose of or with the effect of depriving the employee of previously earned compensation, the employer has breached the covenant of good faith and fair dealing. *Fortune v. National Cash Register Co.*, 373 Mass. 96, 364 N.E. 2d 1251 (1977). This was the view followed by the Oklahoma Supreme Court in *Hall v. Farmers Insurance Exchange*, 713 P.2d 1027 (1985).

Employment-at-Will in Oklahoma

Oklahoma still has one of the most liberal legal definitions in the United States of an employer's right to fire a worker and terminate the "employment at will" contract between the parties.[6] However, statutory limitations and some court decisions have eroded the terminable-at-will doctrine in Oklahoma.

Statutory Exceptions in Oklahoma

Oklahoma has recognized some exceptions to the terminable-at-will doctrine in the form of statutory limitations:

(a) Under the Oklahoma Civil Rights Act, 25 O.S. §§ 1101-1801 (1981), employers are not allowed to discharge a person based on that person's age, race, or sex. The Act also protects employees who oppose discriminatory practices by an employer Id. § 1601. If an employee has been fired for his opposition to violations of the Civil Rights Act, the Oklahoma Human Rights Commission has the authority to reinstate the employee with back pay. Id. § 1505(c)(2) (Supp. 1985).

(b) Other statutes subject employers who wrongfully discharge employees to criminal liability. For instance, it is a misdemenor to discharge an employee for serving jury duty, 38 O.S. § 34 (1981); for serving in the armed forces or militia, 44 O.S. § 208 (1981); or for reporting wage and hour or safety violations, 40 O.S. § 199 (1981). An employee who institutes a claim under the worker's compensation law is also protected from retaliatory discharge and is statutorily entitled to damages. 85 O.S. §§ 5, 6 (1981).[7] It is also illegal to fire an employee because a creditor has filed a garnishment against his wages. The statute reads, "no employer shall discharge an employee... unless served with garnishment on more than two occasions within one year." 14A O.S. § 5-106.

Evolution of Case Law in Oklahoma

Some of the cases which have eroded the traditional view of employment-at-will in Oklahoma since the mid-1970s are outlined as follows:

In *Langdon v. Saga Corp.*, 569 P2d 524 (Okla.App. 1976), an employer's personnel manual was held to create a contractual basis for a terminated employee to recieve employment benefits (vacation and severence pay). Additionally, the court stated:

> The employer remains free to modify such policies prospectively and to the extent there is no accrual, as in the case of vacation and severance pay in the instant contract. We thus conceive personnel policies extending benefits as unilateral offers which are accepted by continued performance.

In *Vinyard v. King*, 728 F.2d 428 (10th Cir. 1984), the Tenth Circuit, applying Oklahoma law, held that a written employee handbook specifying that permanent public employees would not be discharged without cause created a property right in the employee's continued employment. Failure to hold a hearing to determine if cause existed for the employee's termination was found to be in violation of 42 U.S.C. § 1983.

Hall v. Farmers Insurance Exchange

Hall v. Farmers Insurance Exchange, 713 P.2d 1027 (Okla. 1985), was a case which struck fear into the hearts of employers in Oklahoma. The Oklahoma Supreme Court held that Farmers had breached an implied covenant of good faith when it terminated Hall's agency contract.

According to the court, the central issue was "whether a party to a contract which is terminable at

will... may be held liable for damages if such termination is done in bad faith." However, the court's discussion has broader implications:

> This Court has long recognized that parties should be free to contract for any lawful purpose upon such terms and conditions as they believe to be in their mutual interest. Such freedom is not absolute however, and the interests of the people of Oklahoma are not best served by a marketplace of cut-throat business dealings where the law of the jungle is thinly clad in contractual lace.
>
> In this spirit, we have recognized, as have many jurisdictions, that each contract carries an implicit and mutual covenant by the parties to act toward each other in good faith....
>
> A contract consists not only of the agreements which the parties have expressed in words, but also of the obligations which are reasonably implied.... Every contract contains implied covenants that neither party shall do anything that will destroy or injure another party's right to receive the fruits of the contract.[8]

Hall's discussion of employment law was unnecessary, not only because Hall was an insurance agent rather than a traditional employee, but also because he sought recovery for future earnings based upon work already performed.[9] A similar situation was presented in *Fortune v. National Cash Register Co.*, 373 Mass. 96, 364 N.E.2d 1251 (1977), where an at-will salesman was fired after a major sale. The court found the motivation for the termination was to pay as little of the salesman's earned commissions as possible. Although the case is often cited as an example of the erosion of the at-will rule, the court really just awarded damages in an amount that compensated the salesman for the commissions the company wished to withhold. Neither *Fortune* nor *Hall* required major reconstruction of the at-will doctrine to justify compensatory damages. The insurance company and the employer can retain the power to fire "at will," "for good reason, bad reason or no reason," without keeping the right to deny the salesman's reward for past work—earned commissions.[10]

The *Hall* decision sparked controversy in Oklahoma because it was unclear whether the Oklahoma Supreme Court intended to overrule precedent which found no employer liability in termination of at-will employees.

Grayson v. American Airlines

One year after *Hall* in another at-will case, *Grayson v. American Airlines*, 803 F.2d 1097 (10th Cir. 1986) (incorrectly interpreted, as was later determined). Keith Grayson worked for American Airlines in Tulsa. When hired, he signed an employment application which stated that he was an at-will employee and that his employment would be in accord with company rules and regulations. Approximately two years after he was hired, American gave Grayson an employee handbook which included a company rule that no one would be discharged without "good cause." After fifteen years of employment, Grayson was notified that his position would be eliminated due to a reduction in force. Grayson attempted to obtain another job within the company, but American determined that there was not another position available for which he was most qualified. American terminated Grayson and paid him 32 weeks' severance pay. Grayson attempted to obtain another job within the company, but American determined that there was not another position available for which he was most qualified. American terminated Grayson and paid him 32 weeks' severance pay.

Grayson filed suit for breach of employment contract, claiming that the company rule which stated that no one would be discharged without good cause limited American's power to terminate. While the district court granted American's motion for summary judgment, on appeal the Tenth Circuit held that a genuine issue of material fact existed as to whether American breached an implied covenant of good faith and remanded the case for trial. The Tenth Circuit in *Grayson* interpreted *Hall* as indicating that good faith is mandated in all contracts, rejecting American's argument that the covenant of good faith and fair dealing is operable only if the employee has been denied previously earned benefits to be paid in the future. The Tenth Circuit viewed *Hall* as a "a clear indication that the Oklahoma courts have recognized an implied covenant of good faith in contractual dealings."[11] According to the *Grayson* court, in Oklahoma, whether or not an employer has good cause to terminate is not dispositive of the issue; the employer must also act in good faith. Although American did show that good cause to terminate Grayson existed, such a finding did not preclude a separate inquiry into whether American breached the covenant of good faith dealing.[12]

Hinson v. Cameron

After the Tenth Circuit remanded *Grayson*, the Oklahoma Supreme Court again addressed wrongful discharge in *Hinson v. Cameron*, 742 P.2d 549 (Okla. 1987), in which it clarified its holding in *Hall*. The two issues addressed by the Court were: (1) Did an at-will employee, dismissed for her failure to perform an assigned duty, have cause to file suit for wrongful discharge from employment? and (2) Did the employee manual alter an at-will relationship between the plaintiff and her employer?

Hinson, a nurse's assistant employed for fifteen years by Comanche County Hospital, was terminated for failure to follow orders. Hinson alleged that the order that precipitated her discharge was never given to her by her supervisor, Patricia Cameron. She alleged that Cameron subsequently altered the assignment sheet and further argued that the employee manual, which constituted a part of her employment contract with the hospital, protected her from discharge without good cause.

In distinguishing Hinson's claim for wrongful discharge from facts in the *Hall* case, the Court stated (742 P.2d 549, 552):

> The appellate court's reversal of summary judgment against Hinson rests on *Hall v. Farmers Ins. Exchange*. *Hall* came to be perceived as creating a new cause of action in favor of an at-will employee discharged in "bad faith." As we view *Hall*, it stands for the rule that an agent may recover from the principal when the latter has, in bad faith, deprived him of the fruit of his own labor. The relationship between the Hospital and Hinson was that of master and servant, not principal and agent. Hinson is not claiming the Hospital deprived her of any earned income. In short, the facts and the legal relations dealt with in *Hall* are clearly distinguishable from those in the present case.

The Court then summarized the national body of law governing employment-at-will and the exceptions upon which a wrongful discharge claim may be based, discussing why these exceptions did not apply in the *Hinson* case.

(1) Public Policy Exceptions — where employees were dismissed for refusing to participate in an illegal activity, for exposing some wrongdoing by the employer, for exercising a legal right or interest, etc. In measuring Hinson's claim by these public policy exceptions, the Court concluded that she had no actionable tort claim for wrongful discharge. Her termination was not in direct violation of any public policy. Neither the Hospital nor Cameron ordered Hinson to perform an illegal act or denied her an opportunity to exercise her legal rights.

Because Hinson's termination did not violate public policy, the court found no need to rule on this exception. However, the Court adopted a wrongful discharge cause of action based on the public policy exception to employment-at-will. The Court discussed the facts surrounding Hinson's claim as if "Oklahoma would apply the public policy exception and would recognize an action for tortious discharge...."[13]

(2) Implied Covenant of Good Faith and Fair Dealing — in a frequently quoted segment of the *Hinson* decision, the Court stated:

> We hence decline today to impose upon the employer a legal duty not to terminate an at-will employee in bad faith. Assuming there may be an implied covenant of good faith and fair dealing in every at-will employment relation, that covenant does not operate to forbid employment severance except for good causes. The court's adoption of a contrary view would "subject each discharge to judicial incursions into the amorphous concept of bad faith."

(3) Implied Contract — under the implied contract restrictions of the freedom to discharge an at-will employee, courts have found certain factors critical to evaluate whether an implied contractual right to job security exists: (a) evidence of some "separate consideration" beyond the employee's services to support the implied term, (b) longevity of employment, (c) employer handbooks and policy manuals, (d) detrimental reliance on oral assurance, pre-employment interviews, company policy and past practices and e) promotions and commendations.

Hinson asserted that the Hospital's employee manual constituted an implied contract because it contained information regarding hospital policies and employee benefits. She argued that her termination was "without cause" because it was not based on any of the grounds for termination listed in the manual. The Court stated that, viewed in the light most favorable to Hinson, the manual lists but examples of some, although not all, grounds for termination. The manual did not contain an exclusive list of all grounds for termination; therefore, it did not create an implied contract limiting the hospital's authority to terminate Hinson.

Grayson v. American Airlines (Again)

Following the *Hinson* decision, the District Court for the Northern District of Oklahoma on remand of *Grayson v. American Airlines* (September 15, 1987) sustained American's motion for summary judgment. The district court distinguished *Grayson* from *Hall* by noting that Grayson was American's employee but Hall was Farmers' agent; also, the court awarded Hall earned benefits whereas Grayson made no claim for earned benefits. Further, even if an implied contract to terminate only for good cause existed, uncontroverted facts showed that American had good cause to terminate Grayson because of a reduction in work force.

Burk v. K-Mart Corp.

In late 1986, federal district Judge Brett (United States District Court, Northern District of Oklahoma) certified six questions regarding wrongful discharge to the Oklahoma Supreme Court in *Burk v. K-Mart Corp.*,

770 P.2d 24 (Okla. 1989). The action involved a terminable-at-will employee who brought an action in contract and tort against her employer for breach of the implied covenant of good faith and fair dealing in her employment contract. Both causes of action were brought in reliance on *Hall*. The employee argued the employer's agents harassed her, prevented her from performing her duties and by so doing constructively discharged her from her job. She further asserted the employer's agent told her he would not recommend her for promotion because of her sex. She sought lost wages, damages for alleged injury to her reputation and punitive damages for breach of the implied covenant. The employer denied the claim and asserted the contract action did not exist because the employee's termination resulted in no violation of the employee's constitutional rights.[14]

In an opinion which came down on February 7, 1989, the Supreme Court of Oklahoma responded to those questions of law. The questions were:

(1) In Oklahoma, is there an implied obligation of good faith and fair dealing in reference to termination in every employment-at-will contract?

(2) Is the implied obligation of good faith mutual between the employer and employee?

(3) Does the breach of such implied obligation, assuming there is one, sound in contract and/or tort?

(4) If the answer to question No. 3 is "contract," what are the recoverable damages for breach of the implied covenant?

(5) If the answer to question No. 3 is "tort," what is the character of defendant's conduct that would permit recovery of punitive damages?

(6) Whether the answer to question No. 3 is tort or contract, or both, what is the extent of the duty, if any, of either party to mitigate damages?

The Court stated:

> We reject the implication of an obligation of good faith and fair dealing in every employment-at-will contract. Because we answer the first question in the negative it is unnecessary for us to address the remaining questions.

After discussing the various statutory exceptions to employment-at-will, as well as the *Hall* and *Hinson* cases, the Court further stated:

> In *Hinson,* this Court explicitly declined to impose upon the employer a legal duty not to terminate an at-will employee in bad faith. *Today we hold there is no implied covenant of good faith and fair dealing that governs the employer's decision to terminate in an employment-at-will contract.* (Emphasis added).

However, the Court then went further to discuss case law in other jurisdictions regarding judicially-created public policy exceptions to the employment-at-will doctrine and stated:

> We thus follow the modern trend and adopt today the public policy exception to the at-will termination rule in a narrow class of cases in which the discharge is contrary to a clear mandate of public policy as articulated by a constitutional, statutory or decisional law. *We recognize this new cause of action in tort.*

And further:

> Accordingly, we believe the circumstances which present an actionable tort claim under Oklahoma law is where an employee is discharged for refusing to act in violation of an established and well-defined public policy or for performing an act consistent with a clear and compelling public policy.[15]

Marian P. Opala, Vice Chief Justice of the Supreme Court of Oklahoma, stated that the above ruling refutes any implied trend of past decisions toward limiting the ability of an employer to discharge a worker without liability. However, it leaves businesses subject to punitive damages for firings "contrary to public standards."

Opala, not part of the majority decision, stated that he disagreed with the majority opinion that workers could pursue a tort action for a firing that violated public standards, stating that this should be just a contract action, where only back pay and reinstatement could be awarded and not punitive damages.[16]

Rosenfeld v. Doctors' General Hosiptal

On June 13, 1989, the Supreme Court of the State of Oklahoma came down with a decision regarding the public policy exceptions to the terminable at-will doctrine protecting the so-called "whistle-blower" who exposes illegal and unethical activity on the part of an employer.[17] The appeal was brought by Dr. Michael D. Rosenfeld, who had been a staff physician at Doctors' General Hopsital. He alleged his dismissal by the hospital and revocation of staff privileges was "unjust dismissal" alleging anti-Semitism and illegal and unethical employer misconduct[18] as contrary to public policy.

The opinion states,

> Today, we are called upon to expressly apply certain public policy grounds for recovery in tort where an at-will employee is discharged in reprisal for opposition to an

> employers' illegal or unethical activities. We have heretofore recognized such public policy exceptions to the terminable at-will doctrine protect the so-called "whistle-blower", a person who exposes wrongdoing on the part of his employer. These exceptions are applicable to actions commenced in the courts of the State of Oklahoma.
>
> Similarly, thirty-five of our sister states have expressly or implicitly recognized that an employee at will possesses a cause of action in tort in cases where the employee at will is terminated for revealing or refusing to participate in employer misconduct. Any other result would condone breach of a duty imposed by law on all emlployers—the duty not to discharge an employee for attempting to correct an illegal or unethical act.

After stating that in *Hinson v. Cameron* it had acknowledged that an at-will employee's discharge had been declared to be actionable on several public policy grounds [(a) refusing to participate in an illegal activity); (b) performing an important public obligation; (c) exercising a legal right or interest; (d) exposing some wrongdoing by the employer; and (e) performing an act that public policy would encourage or, for refusing to do something that public policy would condemn, when the discharge is coupled with a showing of bad faith, malice or retaliation,] but that the appellant in the *Hinson* case was without an actionable tort claim for wrongful discharge, the Court stated,

> Consequently, the present case represents our *first opportunity to expressly apply the previously delineated public policy exceptions to the employment at-will doctrine.* (Emphasis added.)

The Court stated that the doctor had stated a viable cause of action for recovery in tort pursuant to one or more of the recognized public policy considerations and reversed and remanded the case to the trial court for further proceedings.

McGehee v. Florafax International, Inc.

On July 11, 1989, the Supreme Court of Oklahoma, in *McGehee v. Florafax International, Inc.*, 776 P.2d 852 (Okla. 1989), granted certiorari to determine whether its decision in *Burk v. K-Mart Corp.* applied.

Douglas McGehee was hired in February, 1982, to manage the credit department of Florafax International, Inc., which operates a flowers-by-wire service for member florists. He was hired to work for an indefinite term pursuant to an oral employment agreement. He claims that Florafax sent unordered flowers to Florafax members and charged the purchase price to members' accounts. Many florists refused to pay for or return the unsolicited goods. After an audit during the fall of 1982 which revealed over $600,000 in delinquent accounts, Florafax undertook a number of aggressive collection methods. McGehee alleged one scheme required him to file small claims court actions against members on delinquent accounts. Each action was to allege Florafax was owed $999.99, the jurisdictional limit for small claims court, even though many members owed substantially less. McGehee refused to execute the affidavits required to file these lawsuits and claims that he was fired for refusing to commit perjury. Florafax countered that his firing was for poor job performance. At trial, a demurrer to appellant's evidence was sustained, the trial court concluding that an at-will employee could be fired for any reason, including refusing to commit a crime.

The Court of Appeals reversed the trial court's decision and remanded it for a new trial, holding that appellant's employment contract contained "an implicit covenant that the parties will act toward each other in good faith - a covenant which forbids wrongful resort to the termination-at-will clause in an employment agreement."[19]

The Supreme Court of Oklahoma stated in its opinion:

> The notion that there is "an implied obligation of good faith and fair dealing in reference to termination in every employment-at-will contract" was specifically rejected in this Court's recent decision in *Burk*, 770 P.2d at 26. Instead, *Burk* articulated a limited public policy exception to the terminable-at-will employee rule.

and further:

> The *Burk* decision "did not abrogate the long-standing terminable-at-will rule but only limited its application to those situations in which the employee's discharge results from the employer's violation of a clear public policy." 770 P.2d at 28. ...

Stating that the *Burk* decision will be given *retroactive application*, the Court remanded the case to the trial court to determine whether appellant's firing violated an established and well-defined public policy.

Recommendations

In light of the evolving case law, the following are some guidelines for employers to consider to insulate their companies from lawsuits for wrongful discharge:

(1) ***Recruitment - avoid implied promises.*** Exaggerated statements by recruiters or other management personnel about job security or advancement opportunities may form the basis of a contractual relationship.[20] Advertisements, brochures, or other forms of

solicitation of employment should not contain any operative words that would establish a fixed duration of employment. Such solicitation, even absent a written contract, may establish a term of employment that could negate the presumption of at-will employment.[21]

(2) ***Interviewing.*** Interviewers should be explicitly instructed not to make promises or representations implying that employment is other than at-will. Phrases intended to entice the prospective employee into accepting a position, such as "employment security," "lifelong relationship" with the company, "permanent" hiring, can come back to haunt the employer.

(3) ***Applications.*** One of the employer's first opportunities to dispel any notions that employment is other than at-will is the employment application. Periodic review of the hiring and interview process should include inspection of employment applications. All ambiguous or misleading language, including statements about job "security" or "permanent" employments, should be deleted. A useful disclaimer, which can be set forth separately from the body of the application directly below the employee's signature line, in bold-face type, is:

> I understand that this employment application and any other company documents are not contracts of employment, and that any individual who is hired may voluntarily leave employment upon proper notice, and may be terminated by the employer at any time and for any reason. I understand that any oral or written statements to the contrary are hereby expressly disavowed and should not be relied upon by any prospective or existing employee.[22]

Large companies with operations all over the United States who cannot tailor their policies to specifically conform with every state's laws are trying to avoid problems by eliminating any promise of job security from employee handbooks. Sears, Roebuck & Co. has applicants sign a form declaring that their jobs can be terminated at any time "with or without just cause." The form has helped Sears win court cases.[23]

(4) ***Handbooks-Manuals.*** Materials designed to familiarize employees with company policies have proven to be fruitful sources of evidence in litigation by dismissed employees. In some cases, employers have chosen to eliminate employee handbooks entirely, rather than providing ammunition in a cause for litigation.[24] An employer should delete all references to dismissal only for "just cause," along with vague terms-like "fair" and "equitable"—that may stimulate litigation. There is no legal bar to giving employees a list of reasons for which they may be discharged. But the handbook should also state that the list is intended only as a guideline and the employer reserves the right to discharge an employee for other reasons. (This was an issue in the *Hinson v. Cameron* case.)

The handbook should state, in bold print, that it is not a contract and that the employer reserves the right to modify or amend any personnel policy at any time, even without notice. It should also state that only designated company officials can enter into an oral or written contract with an employee. This statement will help prevent a later judicial finding that the terms of the handbook were modified by the statements of supervisors. The handbook should also state that, in the event of inconsistency between a statement in the handbook and actual practice, the handbook will govern.[25]

(5) ***Personal Policy and Supervisory Manuals.*** An employer's failure to comply with its own personnel policies or supervisory guidelines can have a negative impact against the company (even though such manuals are not meant for nonsupervisory personnel, they are discoverable by the employee in litigation). This is especially true in the case of an employer's noncompliance with discharge procedures that require notice to the employee or a series of progressive steps before termination.

(6) ***Revise Job Descriptions.*** A detailed job description should state that the employer is free to deviate from that description at any time, with or without notice. Otherwise, fired workers may be able to argue that they were "constructively discharged" for refusing to perform work for which they were not hired.

(7) ***Employee Evaluations.*** Employers should provide both training and written instructions for those supervisors who conduct employee evaluations. A uniform evaluation form with clearly worded objective performance criteria and a wide range of numerical ratings connoting "poor" to "superior" performance should be used. Employees should be required to read their evaluations and sign an acknowledgment that they have done so, whether or not they agree with its contents. Employers should monitor the ratings given by various supervisors and departments to detect evaluations that are either abberrant or unusually uniform.

(8) ***Discipline.*** Provide disipline training seminars to all managers and supervisors. All it takes is one maverick supervisor to plunge an employer into a legal battle.[26]

(9) ***Document Unsatisfactory Performance.*** Supervisors should be instructed to document every incidence of unsatisfactory performance. In fact, the employee should be asked to sign the record. A refusal to sign should be noted on the report of the incident. Their termination of a long-term employee should be handled with particular care. Such employment naturally gives rise to a feeling of security and an expectation of continued employment. If, however, the employer can show documentation of the employee's continually unsatisfactory performance, the employer is in a better position to support his claim that the discharge was reasonable. It may help to provide a supervisor with a standardized form to assist in this record keeping.[27]

Most wrongful discharge litigation in Oklahoma alleges violation of public policy, especially age, race or sex discrimination, dismissal for refusing to commit an illegal act, dismissal for being a "whistleblower," and termination in retaliation for filing a workers' compensation claim. We all like to think that we would not be working for an employer subject to liability for firing someone for refusing to commit an illegal act or for being a whistleblower— but any employer, at any time, can easily be the target of a suit alleging dismissal because of age, race, or sex discrimination, even though the allegation may be completely false. And in Oklahoma, this is where the real danger for employers lies, with the new tort cause of action allowing for punitive damages in cases where public policy has been violated. If the employer can go to court armed with documentation of the employee's continual poor performance, he has a much better chance of convincing the jury that the dismissal was because of the employee's performance rather than on the grounds in violation of public policy alleged by the employee.

(10) ***Procedure for Termination.*** The employer should have an internal procedure for job termination. Lower level management personnel should not have authority to discharge employees without first obtaining consent from the personnel department or higher management.

Employers should carefully consider terminations which are proximate in time to an on-the-job injury, after an employee's recovery of benefits, or any employee conduct concerning workers' compensation. 85 O.S. § 5 (1981). Retaliatory discharge suits are very popular, probably because of the difficulty of defense. A termination close on the heels of a workers' compensation claim creates a strong suspicion that the employee's termination was illegal retaliation. To prevail, an employer must be able to produce convincing testimony and documentation to support his reason(s) for discharge. Further, the terminated plaintiff is often able to generate considerable jury sympathy. It should be remembered that the employer's actions will be reviewed by twelve jurors who are more apt to be the employee's peers than the employer's.[28]

(11) ***Post-discharge Procedures.*** If the discharge is not based on the employee's performance, offering outplacement services, at the employer's expense, may serve to direct the employee's attention toward prospects of new employment—and could mitigate claims of bad faith.

There should be an exit interview in which each employee—terminated or resigned—is encouraged to air grievance. This procedure can help uncover problems that might lead to legal action by a fired employee. The employer should act with caution if a fired employee asks for a recommendation or reference. If the employee was discharged for cause, a positive reference could be used as evidence in a wrongful discharge suit.

Of course, following the above recommendations will not completely protect the employer from an employment-at-will lawsuit. Lawrence Z. Lorber states:

> Careful understanding of employment-at-will and appropriate responses to current legal developments can buttress an employer's position. However, very little can be done to completely insulate employers from lawsuits. Anyone with a grievance, a typewriter and a lawyer can file a lawsuit. None of these are in short supply in the United States.[29]

Certainly, the effort to protect the employment at will "right" has not provided the intended results; recent judgments and impending legislation render any further application of time, energy, and money in this pursuit to have moot purpose. Often, the at-will argument has been used as an inappropriate backdrop for a poorly-executed discharge, even when the discharge itself was justified.[30]

Arbitration/Just Cause Legislation

Many management lawyers say that no amount of legal armor can completely protect employers, arguing that dispute-resolution systems such as arbitration are a better way to foil lawsuits. The idea can be found in almost every union grievance procedure, but now more and more companies are using it for nonunion workers (BankAmerica, NBC, Aetna Life Insurance, Federal Express Corp. and Northrop Corp. are but a few).[31]

Bills forbidding wrongful discharge have been introduced in a dozen or more state legislatures. Thus far, however, only Montana has an employment-at-will law, which went into effect in 1987. Montana juries had given huge damages to dismissed employees. To put a stop to such verdicts, employers endorsed a law that caps their liability at four years of back wages. It also prohibits firings without "just cause" for workers who have completed a probationary period. The law, which is too new to have much of a track record, allows arbitration but lets suits proceed if arbitration is rejected.[32]

Theodore J. St. Antoine of the University of Michigan Law School, notes that the United States is the last major industrial democracy in the world without "just cause" protection for workers. Statutory protection against unfair discharge now exists in about sixty countries around the world, including all of the Common Market, Sweden and Norway, Japan, and Canada. The United States is the last major holdout against the recommendations of the International Labor Organization in 1963 and again in 1982 that workers not be terminated except for a valid reason.[33]

Samuel Estreicher of New York University states that experience in European countries indicates that

employers generally make only modest payments to illegally fired people. In Britain, for example, employees are seldom reinstated to their jobs; instead, they receive a monetary award, which in 1978 amounted to only five weeks' pay for the average wage earner. The widespread acceptance of these laws by employers, he states, "may well be attributed to their ability to insure themselves without excessive costs." In the U.S., employers decades ago similarly escaped huge damage awards for job-related injuries by supporting passage of state workers' compensation laws.[34]

Marian P. Opala, vice chief justice of the Oklahoma Supreme Court, currently is part of a 12-member committee for the National Conference of Commissioners on Uniform State Laws that is drawing up a proposed statute, which would be adopted state by state, to establish an arbitration system for the handling of claims arising from firings that are not for "good cause." Good cause would mean for "sound business reasons," states Opala.[35]

The arbitration system would apply to workers on the job for more than a year. A worker could receive reinstatement with back pay and attorney fees. For a firing that flagrantly violates good cause, a worker could pursue punitive damages. This system was proposed in a bill filed in the 1989 session of the Oklahoma Legislature, House Bill 1174, but it was held back in favor of interim study on the subject.[36]

Conclusion

In summary, employment-at-will is alive and well in Oklahoma, with certain exceptions. In *Hinson v. Cameron* (1987), the Oklahoma Supreme Court stated that it expressly declined to find an implied covenant of good faith and fair dealing in every employment contract. It also declined to find in the employee manual an implied contract limiting the hospital's right to terminate.

Then in *Burk v. K-Mart* (February, 1989) the Oklahoma Supreme Court directly addressed the question left open in *Hinson:* whether in Oklahoma, there is an implied obligation of good faith and fair dealing in reference to termination in every employment-at-will contract. It concluded that in Oklahoma, with the exception of a very narrow class of cases where discharge is contrary to a clear mandate of public policy, "there is no *implied obligation* of good faith and fair dealing in reference to termination in any employment-at-will contract." (Emphasis added.)[37]

The exceptions to the employment-at-will doctrine in Oklahoma are:

(1) Statutory exceptions - (Oklahoma Civil Rights Act, retaliation for filing worker's compensation claim, jury duty, etc. - fully outlined on pages 4-5 herein).

(2) Other public policy exceptions evolving through case law:

(a) *Hall v. Farmers Ins. Exch.* (1985) (termination to avoid paying earned commissions to insurance agent);

(b) *Rosenfeld v. Doctors' General Hospital* (termination of "whistleblower") - this case for the first time (June 13, 1989) *expressly applied* the previously delineated public policy exceptions to the employment-at-will doctrine.

Other recent important developments in employment-at-will in Oklahoma are:

Since February 7, 1989 *(Burk v. K-Mart),* the Oklahoma Supreme Court has recognized a *new cause of action in tort* in the narrow class of cases in which the discharge is contrary to public policy—leaving businesses subject to punitive damages for firings contrary to public policy.

And on July 11, 1989 (*McGehee v. Florafax),* the Oklahoma Supreme Court ruled that the *Burk* decision will be given *retroactive application.*

The issue of just cause legislation is receiving much national attention. Even the AFL-CIO's Executive Council has ended organized labor's longstanding ambivalence on the subject by endorsing the concept of wrongful discharge legislation. With jury awards (in other jurisdictions) averaging between $425,000 and $450,000, single awards having gone as high as $20 million, $4.7 million, $3.25 million, and $2.57 million, an informed employer lobby might well conclude that comprehensive just cause legislation, which would exclude jury verdicts and punitive damages, was the more favorable alternative.[38]

One might speculate that a bill proposing the arbitration system described by Justice Opala would be introduced in the 1990 session of the Oklahoma Legislature—and, if it were passed, drastically affect the status of employment-at-will in Oklahoma. However, in a telephone interview on November 29, 1989, Justice Opala stated that he doesn't feel that the bill will pass in the next session of the Legislature, but that he will continue to push for its passage.

With the current status of employment-at-will in Oklahoma, most employers are not greatly at risk for large punitive damage verdicts unless they are involved in actions contrary to public policy. Therefore, such legislation would not have the support of employers in this State, and would be vehemently opposed by those powers-that-be who are trying to bring industry into Oklahoma.

It is our opinion, after talking with these experts, that unless further erosion of employment-at-will in Oklahoma occurs through court decisions, resulting in huge punitive damage awards as have occurred in other jurisdictions, that the wrongful discharge/arbitration

bill proposed by Justice Opala will not pass in Oklahoma. However, if Oklahoma case law eventually moves in the direction that it has in some other states, such as California and Montana, we may in the future see the passage of such legislation and a drastic change in employment-at-will in Oklahoma.

Notes

[1]*Payne v. Western and A.R.R.Co.*, 81 Tenn. 507 (1884).

[2]M. Ronald Buckley and William Weitzel, "Employing at will," *Personnel Administrator*, August, 1988.

[3]William E. Fulmer and Ann W. Casey, "Employment at will: Options for managers," *Academy of Management Executive*, 1990, 4(2): 102-107.

[4]*Cleary v. American Airlines, Inc.*, 111 Cal.App.3d 443, 455 168 Cal. Rptr. 722, 729 (1980).

[5]*Gates v. Life of Mont. Ins. Co.*, 638 P.2d 1063, 1067 (Mont. 1982).

[6]Tim Chavez, "Courts Redefining 'Employment at Will,' Justice Says," *The Sunday Oklahoman*, March 19, 1989.

[7]Donald R. Aubry, "Employers and Employees: A Call for Oklahoma's Adoption of the Whistle-Blower Exception to the Employment-at-Will Doctrine," 40 Okla.L.Rev. 285 (1987).

[8]*Hall v. Farmers Insurance Exchange*, 713 P.2d 1027 (Okla. 1986), quoting *Wright v. Fidelity & Deposit Co. of Maryland*, 1786 Okla. 274, 54 P.2d 1084, 1087 (1936).

[9]Harry F. Tepker, Jr., "Oklahoma's At-Will Rule: Heeding the Warnings of America's Evolving Employment Law?," 39 Okla.L.Rev. 373 (1986).

[10]Id.

[11]*Grayson v. American Airlines*, 803 F.2d 1097, at 1099.

[12]Id

[13]*Hinson v. Cameron*, 742 P.2d 549, at 557.

[14]*Burk v. K-Mart Corp.*, 770 P.2d 24, at 24.

[15]Id.

[16]Tim Chavez, "Courts redefining 'Employment at Will,' Justice Says," *The Sunday Oklahoman*, March 19, 1989.

[17]*Rosenfeld v. Doctors' General Hospital*, ————P.2d ————, 60 OBJ 1507, (Okla. 1989).

[18]Dr. Rosenfeld alleged the dismissal was the result of his discovery and reporting of certain illegal and unethical activities occurring in the hospital, including (1) incompetent physicians and doctors operating and treating patients, (2) incompetent staff causing the death or further incapacity and disability to patients, (3) false billings to patients' insurance companies, patients and medicare/medicaid, and (4) falsification of medical records to "cover" omissions and malfeasance, e.g., removing a respirator from a patient who was not dead; omitting to see a ward patient for 6 days from the day of admittance and not a single chart entry made; chemistries ordered but not done on a patient; life saving procedures ordered upon patient's renal failure, but omitted, and subsequent death of the patient; blood ordered for shock patient but water given -patient sustained permanent irreversible damage because of being in shock for 36 hours prior to administration of the ordered blood; diagnosis changed on patient's chart subsequent to demise; medicine in "pill" form given to comatose patient; and intravenous solution running into mattress instead of patient's arm.

[19]*McGehee v. Florafax International, Inc.*, 58 OBJ 2610 (1987) (Oklahoma Court of Appeals).

[20]Stephen A. Ploscowe and Marvin M. Goldstein, "Trouble on the Firing Line," *Nation's Business*, March, 1987.

[21]Lawrence Z. Lorber, "Basic Advice on Avoiding Employment-at-Will Troubles," *Personnel Administrator*, January, 1984.

[22]Lawrence Z. Lorber, "Basic Advice on Avoiding Employment-at-Will Troubles," *Personnel Administrator*, January, 1984.

[23]William B. Glaberson, "Rolling Back the Boss's Right to Fire at Will," *Business Week*, July 8, 1985.

[24]See footnote 3.

[25]Stephen A. Ploscowe and Marvin M. Goldstein, "Trouble on the Firing Line," *Nation's Business*, March, 1987.

[26]Lynne Curry, "Know Your Rights When Firing an Employee," *Administrative Management*, May, 1987.

[27]Id.

[28]Peter T. Van Dyke and Gary C. Pierson, "Labor Relations: Recent Developments in Employment/Liability at Will," 57 OBJ 1283 (1986).

[29]Lawrence Z. Lorber, "Basic Advice on Avoiding Employment-at-Will Troubles," *Personnel Administrator*, January, 1984.

[30]See footnote 3.

[31]Aaron Bernstein, "More Dismissed Workers Are Telling It to the Judge," *Business Week*, October 17, 1988.

[32]John Hoerr, "It's Getting Harder to Pass Out Pink Slips," *Business Week*, March 28, 1988.

[33]Theodore J. St. Antoine, "At-Will Employment and the Handsome American: A Case Study in Law and Social Psychology," (November, 1987).

[34]John Hoerr, "Beyond Unions," *Business Week*, July 8, 1985.

[35]Tim Chavez, "Fired Employees Gaining Recourse," *The Sunday Oklahoman*, March 19, 1989.

[36]Id.

[37]*Burk v. K-mart Corp.*, as cited in *Wiliams v. Maremont Corp.*, 875 F.2d 1476, 1479 (10th Cir. 1989), an interesting case in which a verdict for $750,000 actual damages and $250,000 punitive damages awarded by a jury in 1984 to a supervisor at Maremont Corp. in Chickasha for wrongful termination was overturned by the Tenth Circuit on May 23, 1989. The supervisor had been terminated for sexual harassment of female subordinates. (During the pendency of the case on appeal, the *Hinson* and *Burk* decisions had been decided by the Oklahoma Supreme Court.) The Tenth Circuit stated, "Upon consideration of the record in the light of new guidance from the Oklahoma Supreme Court, we reverse." and ". . . the question is not whether Maremont was unduly harsh in this instance [as the jury obviously thought it was], the question is whether it had the legal right to terminate Williams under the circumstances. We conclude that it did."

[38]Theodore J. St. Antoine, "At-Will Employment and the Handsome American: A Case Study in Law and Social Psychology."

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Ranking Oklahoma's Taxes

JOSEPH T. JOHNSON

WHERE DOES OKLAHOMA RANK among all the states in the level of taxation? The answer to this question can influence the outcome of a whole range of important decisions, from voting on new taxes for education to choosing a location for a company facility. Yet the answer is not easy to come by. *Money* magazine says Oklahoma has the nation's thirteenth *highest* state and local tax burden, but the Advisory Commission on Intergovernmental Relations says it has the eleventh *lowest*. The Kerr-McGee Corporation says Oklahoma's taxes are higher than Texas', while the Southwest Policy Institute's ranking of states' taxes would put Oklahoma lower than Texas.

One reason these ranking schemes diverge is that size of the tax burden really depends on precisely which taxes are measured: actual collections by the state or theoretical tax bills of average taxpayers, just selected taxes or all state and local levies. Should these amounts be compared to income or to the tax base or to some other measure of state and local revenue sources? These and other tax definitions can decisively affect Oklahoma's ranking.

Yet even after the taxes have been defined, there will remain an area of ambiguity, because there is no universal agreement on how to allocate tax incidence. For instance, much of the sales tax revenue in Hawaii is not raised from Hawaiians. Millions of tourists spending millions of dollars in Hawaii contribute a large proportion of that state's sales tax collections. In Oklahoma, the severance taxes on oil and natural gas, although collected by the state, are paid largely by the actual consumers, who reside mainly in other states. Inclusion of the full amount of Oklahoma's severance tax collections could overstate the state's tax burden.

Income tax rates can be extremely difficult to compare among states. Since some states tax earned income at one rate and unearned income at another rate, individual income taxes have to be somehow adjusted before making interstate comparisons. It's at least as difficult to compare corporate income tax burdens. Many firms do business in more than one state. Yet states differ in how they calculate the percentage of a corporation's income that has been earned in their states. It's therefore possible that high corporate income tax revenue in state A is actually being collected on income earned in state B, thereby overstating the corporate tax burden in state A.

Interstate comparisons of sales and other excise taxes can also be very complicated. For one thing, no two states will levy their excises on exactly the same list of items. One state may exclude groceries but include personal services, while another may tax groceries but not personal services. For another thing, it is not always clear who bears the burden of an excise tax, the seller of the taxed good or the buyer. Economists explain that the distribution of a tax's burden depends on the relative sensitivity of buyers and sellers to price changes of the good. Roughly speaking, if the sellers are relatively more sensitive to price changes, then the buyer will tend to bear the major burden of the tax. Now, if the buyer happens to be from out of state, then the tax, though nominally "in the state" may be part of the tax burden of the state where the buyer resides.

Perhaps the most vexing problem of all in interstate tax comparisons is the enormous impracticality of maintaining comprehensive, up-to-date rankings. As soon as Oklahoma changes its tax system, so do numerous other states. In fact, even when Oklahoma does nothing to

alter its taxes, it's a near certainty that other states are changing and therefore potentially affecting Oklahoma's rank. This wouldn't be so troublesome if all the necessary information were instantly and continually available. Unfortunately, gathering all the facts to make a responsible comparison among all the states can take two years or longer. This means the most credible tax rankings tend to be published long after they have ceased to be totally up-to-date.

Then there is the irony that, even when all the standards have been clarified and agreed upon, the resulting rankings may give an exaggerated impression of differences among states. This is because the difference between, say, 25th place and 30th place may amount to only a 0.7 percent difference in the tax burdens of the two states. It can be rather like the actual time differences among gold, silver, and bronze medallists in Olympic sprints: mere fractions of a second decide the order of precedence.

What all these complications signify is that it is possible to have more than one meaningful list of rankings of the states' tax burdens. Two reasonable people can arrive at different, though equally legitimate, ways to rank Oklahoma. It may be that Oklahomans cannot settle on any single all-purpose ranking of tax burdens. Nevertheless, they can at least take note of the standards by which each ranking is compiled in order to understand some of the factual bases of their disagreements.

This paper tries to explain the criteria of seven of the best-known rankings of Oklahoma, namely, those by the Advisory Commission on Intergovernmental Relations, the Southwest Policy Institute, the U.S. Bureau of the Census, the Tax Foundation, the Citizens for Tax Justice, the District of Columbia Department of Finance and Revenue, the Kerr-McGee Corporation, and *Money* magazine. Each of these organizations has published a standardized measure of state or local taxation and ranked each state's measure by its size relative to the other states'. Table 1 shows these measures and their respective rankings.

Advisory Commission on Intergovernmental Relations Southwest Policy Institute

Both the Advisory Commission on Intergovernmental Relations (ACIR) and the Southwest Policy Institute (SPI) rank state tax burdens by comparing actual tax collections with the state's ability to raise taxes. This requires using the same tax bases in each state in order to ensure comparability among states. This standardized list of items that are potentially taxable may include broad categories like income, property, and general sales transactions, as well as narrow categories like sales of alcoholic beverages or automobile licenses.

Advisory Commission on Intergovernmental Relations

The ACIR measures what it calls tax effort divided by tax capacity. Roughly speaking, this means total taxes collected by the state divided by the total value of the tax base. The key to ACIR methodology is establishing a common tax base and national average tax rate so that all states can be compared by exactly the same criteria.

The denominator of the ACIR ratio, tax capacity, is derived by applying national average tax rates to each of a "representative" set of tax bases in the state. (A base is the item being taxed, such as property or income.) Since, as we've already seen, different states collect taxes on different bases, the ACIR develops a standardized or "representative" set and derives its taxation measure assuming this set represents the potential tax bases for any state. This measure of tax capacity is computed with the same tax rate, i.e., the national average, for each state; so states will differ in size of capacity according to size of their respective bases. For instance, Texas will have a larger total tax base, i.e., its representative set of bases will have a larger value than Oklahoma's set of bases. Texas will therefore have a larger tax capacity, which is the denominator of ACIR's ratio for the state. In defining and evaluating a state's tax base, ACIR undertakes to include the ability to tax nonresidents, e.g., tourists with sales taxes or natural gas consumers with severance taxes.

The numerator of the ACIR ratio is simply the total amount of tax revenue collected by the state and local governments. Since the denominator of the ACIR ratio accounts for the capacity to tax nonresidents, the numerator includes exported taxes collected from such sources as tourists, consumers of natural gas paying a severance tax, and so forth.

Southwest Policy Institute

The Southwest Policy Institute publication, "Let's Stop Blaming the Oil Boom," does not explicitly rank the states' tax burdens but, rather, assigns Oklahoma to the highest eight percent of all states (i.e., top four) in size of tax burden growth. This implicit ranking measure derives from the ACIR Tax Effort ratio but concentrates on how the ratio changes over a five-year period. Actually, the Southwest Policy Institute relies upon the *Grant Thornton Manufacturing Climates Study* for the ACIR data and change calculations.

The numerator of the Southwest Policy-Grant Thornton ratio is the change in the ACIR Tax Effort over the last five years. Tax Effort is itself a ratio, namely, of tax collections to tax capacity; so the Southwest Policy numerator is the five-year change in a ratio. The Southwest Policy denominator is simply the tax effort for the base year, i.e., from five years earlier than the year being measured.

TABLE 1

State Tax Burdens as Measured and Ranked by Various Organizations

	Numerator	Denominator	Oklahoma Rank	Texas Rank	Year of Report	Year of Data	Difference in Oklahoma & Texas Burdens
Advisory Commission on Intergovernmental Relations	Tax Revenues of state and local governments	Potential tax bases of state multiplied by national average rates	40	42	1990	1988	1.1%
Southwest Policy Institute	Change in tax burden (ACIR) in last 5 years	Tax burden 5 years ago	4	2	1989	1986	-26.2%
Census Bureau	Tax revenues of state and local governments	Personal income of state residents (divided by 1,000)	27	33	1990	1987-88	2.3%
	Tax revenues of state government	Personal income of state residents (divided by 1,000)	20	47	1990	1989	25.8%
Tax Foundation	Tax revenues of state projected from Federal Budget (precise method not revealed)	Income of state abstracted from projected GNP	7	46	1990	Sources Not Revealed	22.0%
Citizens for Tax Justice	Average sales & excise tax rate (state & local) multiplied by expected income, property, purchases of averagefamily	Income of average family in seven income brackets in each state	6	9	1988	1981-86 (middle income bracket)	6.7%
District of Columbia	Income, sales, property, auto tax rates (state & local) multiplied by expected income, property, purchases of average family	Income of average family in four income brackets in state's largest city	39 (OKC)	45 (Houston)	1989	1988 ($50,000 bracket)	20.9%
Kerr-McGee Corp	Income, sales, property tax rates (state & local) multiplied by expected income, property, purchases of average family	Income of average family in four income brackets (only 14 states ranked)	7 (out of 14)	12	1990	1989 ($50,000 Bracket)	24.2%
Money Magazine	Income, sales, gasoline tax rates (state) multiplied by expected income and purchases of average family.	$61,372 income of average family of *Money* readers	13	48	1990	1988	93.1%

Unlike ACIR, Grant Thornton does not consider severance taxes on natural resources to be part of a representative or national average tax base. Therefore, it deducts severance taxes from both the ACIR numerator (collections) and the ACIR denominator (representative tax base). This means the implicit Southwest Policy ranking of changes in state tax burdens does not include state severance taxes.

Further Explanations

The ACIR tax burden ratio, which it calls Tax Effort, can be sensitive to tax politics and legislation in the states. This is because it computes the denominator, the state's theoretical fiscal capacity, by relying on national average tax rates. It pegs every state's ability to raise taxes to a single national rate for each tax base. That national rate is derived by averaging the prevailing rates in all the states levying such a tax. If these states vote to raise or lower their rates, the national average and the fiscal capacity measure will rise or fall accordingly. In this sense, the ACIR ratio imples that a state's potential to tax itself can change due to developments entirely external to the state.

The ACIR also computes a ratio called Revenue Effort. In addition to all the tax bases and collections in Tax Effort, Revenue Effort includes some non-tax sources of revenue: user charges for government facilities (e.g., state park fees), state lotteries, and rents and royalties from government mineral resources not already covered by severance taxes.

It may be of interest to note that the ACIR methodology does not incorporate the concept of progressivity in taxation, i.e., levying a higher rate on larger tax bases. Unlike the Federal income tax, the rates of which rise as the individual's income rises, the ACIR's measure of fiscal capacity applies the same to rate every state regardless of the size of its tax base.

The SPI-Grant Thornton ranking of changes in tax burden can be sensitive to differences among, say, oil and gas states in their respective severance tax rates. Suppose two states have the same natural resource tax base, e.g., equally-valued natural gas deposits, but that one actually taxes its base much more than does the other. Deduction by Southwest Policy-Grant Thornton of severance taxes makes the lower-taxing state's burden go up relative to the higher-taxing state. It reduces capacity, the denominator of the tax burden ratio, equally in both states but reduces collections, the numerator, less in the low-severance-tax state. This causes tax collections in the low-severance-tax state to appear much larger in relation to the reduced capacity. This in turn cause the computed tax burden to become larger in the low-severance-tax state and may be enough to alter its ranking with respect to the high-severance-tax state. Severance taxes are considered some of the most exportable to nonresidents. The Southwest Policy ranking thus assigns a higher ranking to states that don't export as much of their taxes as they could, i.e., that don't tax as much of their oil or gas or timber production as they could.

U.S. Bureau of the Census Tax Foundation

Both the Census Bureau and the Tax Foundation rank state tax burdens by comparing state and local collections to a measure of state income. The Census rankings are also published, in a different format, by Commerce Clearing House, Inc.

U.S. Bureau of the Census

The Census Bureau, in its annual *Government Finances*, uses actual tax collections and actual state income in order to compute a tax burden ratio. The collection data on fiscal year 1987-1988 are derived from the Federal Budget for 1990. The income data are based on U.S. Department of Commerce calculations for the national income and product accounts.

The numerator of the Census tax burden ratio is each state's tax collections, including revenues from both state and local levies on income, property, sales, alcoholic beverages, public utilities, and other sources. The denominator of the Census ratio is state personal income divided by 1,000. Thus the ratio gives the amount of taxes per $1,000 of personal income earned by the residents of each state.

In its annual *State Government Tax Collections*, the Census Bureau also ranks states by amount of state taxes per $1,000 personal income. That is, the numerator of this tax burden ratio consists of state, but not local, tax collections. The denominator is the same as in the *Government Finances* ratio, namely, the income earned by the state's residents.

Tax Foundation

The Tax Foundation uses a ranking methodology that is roughly similar to the Census Bureau's, although it arrives at a noticeably different set of state rankings. For each state, it divides a measure of state and local tax revenues by a measure of total state income. This ratio, the state's taxes as a proportion of income, is compared to all other state's ratios and given a rank.

The denominator of the Tax Foundation ratio consists of the projected gross state product in 1990. This projection is based on the predictions about Gross National Product set forth in the Federal Budget for 1990-91. Portions of the predicted GNP are then allocated to each state according to some formula in order to arrive at projected state product, which is then taken as the measure of state income.

The numerator of the Tax Foundation ratio is some measure of projected tax collections for the state. The

precise formula has not been made available by Tax Foundation researchers, so it is difficult to say how their tax burden ratio compares with others.

Further Explanations

The Census Bureau's use of state tax collections in the numerator can make the tax burden appear lower than is justified. Some of the state's income may well have accrued to residents who worked, owned property, or did business in another state and were therefore taxed in another state instead of in their own. In this case, the tax collection numerator would be smaller than the actual tax bill paid by the state's residents and businesses. The ratio could turn out to be smaller and the ranking lower than justified by the actual tax burden borne by the state's taxpayers. Of course, by the same token, the numerator would be larger than the actual burden borne by residents if some of the collections came from taxing nonresidents.

Using personal income as a denominator in a tax burden ratio can overstate the burden. Income earned by residents is supposed to reflect the state's ability to pay state and local taxes. Yet the income in the denominator does not reflect the incomes of nonresidents who are taxed by state and local governments. Individuals from out of state may be taxed for working, making purchases, or owning property in the state. Since the denominator of the Census ratio includes only the income of state residents, it may be smaller than the state's actual ability to pay. The result can be a larger than appropriate tax burden ratio and perhaps a higher than justified ranking of the state's tax burden.

Unlike the Census Bureau measurement, the Tax Foundation's ratio appears to include business income in the denominator. It also purports to avoid the ambiguities of nonresident taxes by adjusting both tax collections and state income for exporting and nonresident income, respectively. Although it hasn't revealed its exact methodology, the Tax Foundation claims to attribute taxes by establishing whence the taxes are paid, not the state where they are collected. Without documentation, though, the Tax Foundation's ranking scheme should not be considered a proper measure of states' taxes.

Citizens for Tax Justice
District of Columbia
Kerr-McGee Corporation
Money Magazine

The Citizens for Tax Justice (CTJ), the District of Columbia (DC), the Kerr-McGee Corporation and *Money* magazine all rank states' tax burdens by computing the taxes that hypothetically would be owed by some standard or average family if that family's income were taxed in each of the fifty states and the District of Columbia. Beyond that, the ranking systems differ widely in their definitions of taxes and taxpayers.

Citizen for Tax Justice

A 1988 tax study by Citizens for Tax Justice (CTJ), *Nickels and Dimes,* deals only with the sales tax, including general sales, excise, and gross receipts taxes. Consequently, its rankings do not purport to characterize the entire tax burden in a state. The CTJ model does include both state and local taxes by calculating an average local rate and adding it to the state sales tax rate. The study establishes seven categories or quantiles of household income and then computes how much a family of four from each quantile would pay in sales tax in each of the fifty states and the District of Columbia.

The denominator of the CTJ ratio can be average income in one of seven family income classes. There is an income class for the 20 percent of the families with the lowest incomes in the state, a class for the 20 percent of families with the next-to-lowest incomes, and so forth on up to a class for the 0.7 percent of families with the highest incomes in the state. The exact dollar limits of each class vary from state to state according to how the ranges of household income vary from the richer to the poorer states. For instance, the average family income in New Jersey's middle income category is $57,770. In Oklahoma it is $36,517.

The CTJ numerator can be one of seven tax bills, depending on which income category the average family of four is assigned. The state's sales taxes are applied to the average family's income as if it made "average" purchases for its income class. That is, for each income category, the family of four is assumed to spend on various items (food, transportation, utilities) in the same proportions as reflected in the U.S. Bureau of Labor Statistics' *Consumer Expenditure Survey.*

District of Columbia

In its annual study, *Tax Rates and Tax Burdens in the District of Columbia: A Nationwide Comparison,* the District of Columbia compares itself as a city with other cities in the nation. Specifically, it compares its individual tax burdens with those of the largest city in each of the fifty states. The DC ranking of Oklahoma is therefore a ranking of Oklahoma City among all other states' largest cities (not the metropolitan areas), e.g., Casper, Wyoming; Houston, Texas; and Newark, New Jersey.

The numerator of the DC tax burden ratio is the taxes paid by a hypothetically average family in one of four income categories. The family in each category is assumed to consist of two working spouses and two dependent children. The study addresses income, propety, sales, and automobile taxes. To compute income and

property taxes, the study assumes one spouse makes 70 percent of the income while the other makes 30 percent and that each family owns its home in the state's largest city. Other assumptions are made about what an average family would spend in order to compute sales and automobile taxes.

The denominator of the DC ratio can be one of four family income levels: $25,000, $50,000, $75,000, and $100,000 per year. Thus the DC ranking scheme computes four tax burden ratios for each state's largest city and for the District of Columbia itself. It's possible for a city to have different rankings, depending on which ratio is used.

Kerr-McGee Corporation

In February, 1990, Kerr-McGee published a comparison of Oklahoma's tax burden with those of thirteen alternative states: Arizona, Arkansas, California, Colorado, Georgia, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Texas. The study computed the tax burdens of four hypothetical households as if they resided in Oklahoma and as if they resided in each of the thirteen other states.

The numerator of the Kerr-McGee tax burden ratio consists of the hypothetical collections of three kinds of taxes: income, sales, and property. The four households are all assumed to consist of two married people with two dependents who spend 25 percent of their gross income on taxable goods and services. They are also assumed to own houses whose values differ according to their respective household incomes.

The denominator of the Kerr-McGee ratio can be one of four gross incomes: $30,000, $50,000, $100,000, and $200,000. A separate tax burden ratio is computed for each income category. Rather than compute a numerical ranking, the study has bar graphs that show the states arranged in ascending order according to their tax burden ratios.

***Money* Magazine**

The January, 1990 issue of *Money* magazine also uses the device of an average household to rank states' tax burdens. In this case it's an average reader of *Money* magazine: two earners, two children, $61,372 in income, of which $1,499 is unearned (interest and dividends). Although its computation includes state income taxes along with general sales taxes, it excludes property and other taxes. For most states, the computation excludes any local taxes.

The numerator in *Money's* tax burden ratio is the sum of income and sales taxes. The income levy is found by multiplying the average income of $61,372 by the state's income tax rate for a two-parent, two-child family. The sales levy is derived by multiplying the sales tax rate by the expected expenditures of this average *Money* family: $4,992 on food, $1,034 on clothing, and 940 gallons of gasoline consumed.

The denominator of the *Money* ratio is quite simple: $61,372 regardless of state. The aim is to see how a family of four with this typical *Money* income will be taxed in each of the fifty states.

Further Explanations

None of the ranking systems based on a typical family's income includes the full range of taxes. The Citizens for Tax Justice study is solely concerned with sales taxes. Kerr-McGee's ranking includes only state taxes on income and state and local taxes on sales and property. The District of Columbia ranking accounts for income, property, sales, and auto taxes, but not, for instance, severance or utility taxes. *Money* Magazine's ranking includes just income and sales taxes and generally excludes local taxes of any kind.

It's possible that a change in the profile of the average taxpayer would significantly alter tax burden ratios and even the state rankings in all four studies. This is because all four derive the tax payments of their respective average families from assumptions about how these hypothetical families spend their hypothetical average incomes. In some states, a family of four with an income of $61,372 might have a higher proportion of earned as opposed to unearned income. Then again, the family might spend its income in different proportions or even save more than the hypothetically average family. Other examples could be formulated of circumstances that would cause tax rates to be applied in different proportions than assumed by the studies.

It's also difficult to say to what extent a state's tax burden can be characterized by taxes on the single type of household studied by *Money*. For families in other income or expenditure categories, the state's burden ranking may come out higher, lower, or just the same. The District of Columbia and Kerr-McGee studies address this ambiguity by examining four income categories and assigning expenditures on the basis of those different categories. The Citizens for Tax Justice study examines all of seven categories. In addition, it accounts for differences among rich and poor states by defining income categories on the basis of each particular state's average income.

Using the Rankings

It's useful to note that most of the ranking organizations use hypothetical statistics to compute the tax burden. Only the U.S. Census Bureau relies totally on actual statistics, i.e., historical data on income earned and taxes collected. All the other ranking organizations derive at least a part of their tax burden ratio from

hypothetical statistics, e.g., projected income, hypothetical tax base, average (meaning typical) family earnings and expenditures. This does not necessarily diminish the significance of these ratings. On the contrary, it can serve to make them more powerful by enabling more comprehensive comparisons than would be possible with just the plain statistics at hand. As has already been discussed, plain statistics don't account for, among other things, the great variability among states as to which items are taxes and which taxes fall on nonresidents.

It's also useful to consider how aggregating different types of taxes into a single measurement of tax burden can obscure potentially interesting policy issues. There is a substantial body of opinion that judges the fairness of a tax by its progressivity, that is, by the degree to which a tax rate goes up as the taxpayer's ability to pay goes up. Yet most measures discussed in this article give the same weight to income taxes, which are usually progressive, as to sales taxes, which are usually regressive. Only the Citizens for Tax Justice tax burden ratio is designed to highlight regressivity, in this case, of sales taxes. Another policy issue obscured by having all taxes combined in a single measure is the relative importance of business and individual taxes in a state's total tax collections.

It's worth saying again that the tax rankings are not set in concrete. They change constantly, though not always significantly, as states and localities alter their tax systems and as the state and local economies fluctuate. This makes it even harder to compare states. A state with high ranking (comparatively high tax burden) according to a published report may have acquired a much higher comparative burden since the last publication of the ranking. In other words, if the rankings were computed on the basis of the latest data, the state could come out much lower.

Nevertheless inspection of the various tax ranking schemes alongside one another should aid in discussing the pros and cons of tax issues. This way, when a particular tax ranking is used as evidence in support of a particular position on a tax issue, all parties can understand exactly what is meant by the ranking. The fact that different organizations use different criteria may well reflect differences in priorities among those organizations with regard to what is the most important consideration when discussing taxes. In other words, two organizations can have completely different purposes for compiling their tax rankings.

As a matter of fact, there is no reason that two sides of a debate should agree on the significance of a tax burden ratio even if they do agree on the particular statistic. The Southwest Policy Institute, for example, accepts the ACIR measure of tax burden but evaluates it differently. While the ACIR publication of rankings tends to emphasize the denominator or tax base, Southwest Policy emphasizes the numerator or tax collections. The ACIR emphasis is on the capacity to reap taxes; the Southwest Policy emphasis is on the size of the tax bill. Roughly speaking, the ACIR views tax bases as an opportunity for a state to improve itself while Southwest Policy views taxes as an obstacle to economic progress. This difference in outlook is serious and therefore a legitimate matter for public debate. Such a debate will, however, be confusing and unproductive unless it is based on a careful understanding the differences among tax ranking schemes.

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